



Neutral Citation Number: [2024] EWHC 309 (KB)

Case No: KB-2024-000385

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**COURT 37 (IN PUBLIC)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Wednesday, 14<sup>th</sup> February 2024

**Before:**  
**FORDHAM J**

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**Between:**  
**OWEN MORGAN** **Claimant**  
**- and -**  
**BUSINESS MORTGAGE FINANCE 5 PLC** **Defendant**

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**The Claimant in person**  
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Hearing date: 14.2.24

Judgment as delivered in open court at the hearing  
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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

**FORDHAM J:**

1. This case has come before me today as a “without notice” application. Mr Morgan (the Claimant) sent an email at 12:38 today to King’s Bench Listing, explaining that he was seeking an emergency injunction to suspend an eviction due to take place tomorrow at 11am. He asked for a one-hour hearing. That hearing has taken place before me this afternoon and he has addressed me with clarity. The case has a long background, as I can see from the documents which have been filed with this application. In his “Reasons” for his “Draft Order”, Mr Morgan makes reference to “one court adjudicating on an issue currently before another court”. I am entirely satisfied, from what I have seen and heard, that that is an accurate description of what is being sought from me today.
2. The original mortgage in this case goes back to September 2006, I am told. Events then took place in 2018 which involved the Defendant appearing on the Land Register. Mr Morgan’s position is that he simply wishes to have clarity and confidence that the Defendant can legitimately collect arrears from, and can enforce, the mortgage. Specifically, he says that key “disclosure” has been needed throughout, which was sought from January 2022 in the county court proceedings, and in applications for disclosure which, he tells me, were filed in that court in October 2022. He points to a number of features of the sequence of events and tells me that these features have always been part of those concerns, raised by him and his wife, in the county court proceedings. At stake is the repossession of their long-standing family home in Staffordshire.
3. From among the documents which I have been given and have read, I have seen Mr Morgan’s witness statement filed in the Walsall County Court. It is undated but was in connection with an emergency application that he made in September 2023. That witness statement describes the sequence of events, including what had happened in 2018. It refers to Mr Morgan having consistently written to the Defendant seeking confirmation of any contractual or legal obligation to pay to them the mortgage arrears (which, I interpose, he there described as being approximately £76k). That September 2023 witness statement also refers to contact, and attempted contact, between the solicitors on both sides. Mr Morgan tells me his solicitors have been Tower Bridge Legal and the Defendant’s solicitors have been Moore Barlow.
4. Among the various events in the chronology are the following:
  - i) A warrant of possession was due for execution on 26 October 2022. At that stage, Mr Morgan made an application in the county court, to suspend that warrant of possession, on 24 October 2022. That was plainly an application that was made on notice to the Defendant, because it culminated in a consent order the following day, 25 October 2022, when the case came before District Judge Lyons and that eviction was cancelled.
  - ii) On 18 September 2023, Mr Morgan made an emergency application in the county court, to set aside a possession order which had been made on 21 June 2023. That was the application which was supported by the witness statement to which I have referred. On 19 September 2023 Deputy District Judge Howard set aside the possession order and directed a one-hour hearing which in due course was listed for 1 December 2023.

- iii) The hearing on 1 December 2023 then took place. Mr Morgan was represented by Counsel. He was unsuccessful at that hearing.
  - iv) As a consequence, the warrant for possession was obtained by the Defendant on 7 December 2023 and served on 25 January 2024.
  - v) Mr Morgan tells me that he subsequently had a conversation with his solicitors on 31 January 2024.
5. The warrant of possession that was served on 25 January 2024 stated that it was due for execution at 11am tomorrow morning, 15 February 2024. No application was made in the county court to suspend the warrant of possession. Mr Morgan, for reasons that I have explained, is aware of that as a course open to him, because he had taken precisely that course in October 2022.
6. As to the Order that Mr Morgan is asking me to make today:
  - i) It begins with orders for “pre-action disclosure” to be made by the Defendant under CPR 31.16. That pre-action disclosure is effectively seeking information relating to the mortgage loan. I asked Mr Morgan what claim, or “action”, that was disclosure “pre-” or prior to. He told me that it would be a claim to recover from the Defendant mortgage sums which have been paid, over the years, by himself and his wife.
  - ii) The draft Order ends by asking this Court today to order that the county court claim is “voided” based on a fundamental defect.
  - iii) The other Order sought from me, today, is that “the warrant for possession issued on 7 December 2023 and served on 25 January 2024 in the county court at Walsall claim 7PA96571 warrant number 71125/03 is now suspended until such time as the source of funds has been proven and the [Defendant]’s claim proven”.
7. I am not prepared to make any of these Orders. I will explain why.
8. First, I have a serious concern about being asked, on the afternoon before the execution of a warrant, to suspend it, in circumstances where the Defendant’s voice is not before this Court. As I have explained, service of the warrant of possession was on 25 January 2024, and it gave tomorrow’s date for execution. Mr Morgan had solicitors and Counsel. He was able to have a conversation (on 31 January 2024) with his solicitor. I asked him what had happened in between 25 January 2024 and his coming to Court today. There is no correspondence. His answer, ultimately, was that he does not have any of the correspondence between the firms of solicitors; but that nor does he say there was any such correspondence after 25 January 2024. Mr Morgan said, in the documents before the Court, that there was one phone call – on 9 February 2024 – by a financial adviser who is assisting him, who had a conversation with a named individual at the Defendant. The Claimant told me today that that was a call in which the financial adviser was asking the Defendant for clarification of the events of 2018. He also told me that, at 12:00 hours and 12:01 today he himself made calls to the phone number on the website for Moore Barlow solicitors which went unanswered. I can see from the website of Moore Barlow LLP solicitors that the

number that Mr Morgan has given me is the same one as is on that website. When I pressed him, Mr Morgan told me that he had been making unanswered calls over recent days.

9. I simply cannot be satisfied, on the basis of the evidence before me, that there has been any proper attempt to ensure that the Defendant could be heard will have its representations considered at a hearing which was – once again – seeking to set aside or suspend its enforcement action. I am entirely satisfied that there was ample opportunity to be able to take, and evidence before the Court, steps to notify the Defendant through its solicitors. I am satisfied that Tower Bridge Legal, who Mr Morgan tells me remain “on the record” (at least in the county court proceedings), could have been enlisted to assist. The papers could have been prepared in good time, and they could have been served. This Court could have been shown evidence of the steps that had been taken. If those steps had fallen on deaf ears, or there had been a lack of response, then the Court would have been able to take that into account. Courts will always be concerned, when they hear “without notice” applications, about what has been done, what could have been done and what should have been done to notify the other party. Especially when the Order that is being sought is one taking immediate effect. I am unable to be satisfied that this application has been approached in a procedurally fair way.
10. This is all the more important, given that it is obvious that this application to the High Court is a satellite application which it arises out of county court proceedings in which both parties have been involved.
11. That takes me to the second problem with the urgent application to suspend tomorrow’s execution of the warrant for possession. It is clear from the documents that the process of the county court, with all the due process rights and protections that arise, has been on foot. I have referred to the consideration by at least three judges in the County Court: District Judge Lyons in October 2022; Deputy District Judge Howard in September 2023; and District Judge Thomas in December 2023. All of those procedural stages in the county court postdate the raising of the same key questions that are being ventilated before me, about the Defendant’s identity and entitlement to enforce this mortgage and these arrears. They all postdate the 2022 disclosure requests and applications, all in the county court, which Mr Morgan has described to me today.
12. The county court proceedings provided the forum for all of those matters to be raised. I have no doubt that they could be, and were, raised including in the December hearing where Counsel appeared on behalf of Mr Morgan. I have already referred to the fact that the September 2023 witness statement, prepared with the assistance of lawyers, raised the very points that have been raised with me today. I have no doubt that Mr Morgan’s solicitors and barrister were a position to assist him to understand the rights that he had to challenge matters in the county court. What in the event has happened as Mr Morgan candidly told me at today’s hearing is that he has “lost confidence in” the county court; and that, rather than make an application to seek to suspend again a warrant for possession, he has sought to come to this Court as ‘the highest court in the land’, as he put it.
13. Whatever Mr Morgan meant in his application about his “understanding” that it would be “wrong in principle” to invite “one court to adjudicate on issues currently before

another”, having been denied full disclosure by that court, I am quite satisfied that that is an apt description of what I am today being asked to do; and that it is indeed wrong in principle to seek to use the High Court in that way. Rights of challenge, including rights of appeal, are carefully designed to provide appropriate layers of procedural and substantive protection. This application, designed as “pre-claim disclosure” together with other orders, in my judgment, clearly operates to cut across the county court proceedings

14. Finally, if I pose for myself the key questions which arise in any urgent application for an interim order, then I answer them in this case as follows. (1) I cannot see a viable claim properly, brought before the High Court, arising out of the county court matters. I am unable to see from the papers any arguable basis on which any order made by the county court is or has been contrary to law. (2) The balance of justice and convenience in any event strongly and decisively comes down against me making any order today, to interfere with this execution process arising out of the county court proceedings.
15. In all the circumstances, and for all those reasons, I refuse the urgent “without notice” application which has been made by Form N244 today.

14.2.24