

Neutral Citation Number: [2021] EWHC 3091 (Ch)

Case No: FL-2019-000017, FL-2021-000004, FL-2021-000006

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
FINANCIAL LIST (CH)

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

Date: 25 October 2021

Before :

Mr Justice Miles

Between :

Allianz Global Investors GmbH and Ors.

Claimants

- and -

RSA Insurance Group Limited
(formerly RSA Insurance Group plc)

Defendant

Peter de Verneuil Smith QC, Shail Patel and William Harman (instructed by Brown
Rudnick LLP) for the Claimants

Tom Adam QC, Simon Hattan and Jacob Rabinowitz (instructed by Herbert Smith
Freehills) for the Defendant

Hearing date: 25 October 2021

APPROVED JUDGMENT

Mr Justice Miles:

1. This case involves a very large number of claimants. At the first CMC in March 2021 it was ordered that there should be a process whereby the claimants and each of them are required to provide answers to questionnaires in relation to the issue of reliance. The claimants have been ordered, essentially, to explain their case on the issue. For convenience, the claimants have divided themselves into different categories called, "Reliance categories 1-3". In broad terms, RC-1 consists of claimants who are said to have read and relied upon the published information itself when deciding whether to acquire or continue the RSA shares, RC-2 consists of claimants who did not, themselves, read published information, but say that they relied on the published information indirectly by means of other sources of information that acted as a conduit for the published information, and RC-3 consists of claimants who say that they relied on the price of RSA shares from time to time and/or its accuracy, and include those who relied upon RSA being the constituent of an index or benchmark by reason of its market capitalisation within that index.
2. One of the reasons for ordering the provision of answers to the questionnaires was to enable an orderly sampling process to take place so that claimants within each of the three categories could be selected to go forward as sample claimants for the first trial, and the court's determination in relation to them would then operate by way of guidance in respect of the other claimants within the same respective categories.
3. There is also a case being run by the claimants which they have called, "presumed reliance", where they say the claimant who does not fall within one of RCs 1 to 3 is entitled to rely on a presumption of inducement. They say that in this case the published information was material in that it was of such a nature that it would be likely to play a part in the decision of a reasonable investor and market participant to acquire, continue to hold, or dispose of shares in RSA and/or to do so at a particular price.
4. The claimants all contend that they are able to rely on presumed reliance whether or not they fall within one of the reliance categories. I am informed that some of the claimants who have provided answers to the questionnaires have said that they do not fall within RCs categories 1 to 3, and, therefore, by necessary implication, base their claim in relation to misleading or untrue statements solely on the theory of presumed reliance.
5. Separately the claimants rely on allegations of dishonest delay in relation to the provision of information and in that regard they say do not need to advance a positive case in relation to reliance.
6. As I have said, I ordered the responses to questionnaires to be provided at the first CMC in March 2021. They were required to be provided by 6 July 2021. That deadline was not met by a fairly large number of funds, who are effectively claimants in the case. At the second CMC that deadline was varied to 17 September 2021. As at that date there were still a large number of funds which had not provided answers to the questionnaires. Since 17 September some more questionnaires have been supplied, and I am told that there are still 18 remaining outstanding answers relating to 39 funds.

7. The reason for the orders that are being made was, as I have said, in order to enable an orderly process to take place for the selection of sample claimants to go forward. It seems to me that all claimants are required to provide the information in order that a proper sampling process can take place which is for the benefit of all parties, including all of the claimants. Moreover, the orders I have made are not to be treated as optional or merely directional; they were orders requiring the provision of this information by each of the claimants separately. The defendant cited Hildyard J's comment in a similar case that where a claimant becomes party to an action of this kind it is not a mere question of subscription in the sense of just signing up to the proceedings and sitting back; every claimant who becomes a party is bound to comply with the rules governing the litigation. I agree.
8. In my judgment the claimants have already had ample time to meet the various deadlines and provide the questionnaires. I am not satisfied by the evidence that they have had any real difficulties in answering the questions, or if they have had such difficulties, that they could not have done so by now. These are serious Financial List proceedings where proper engagement with the rules of the court is required, and it is for the claimants - all of the claimants - to comply.
9. The defendants seek an order that unless the remaining questionnaires are provided by a deadline of 29 October 2021, any claimant who has not served a response by that date shall have its claim struck out. They submit that the claimants have had more than enough time to comply, that they are already in breach of the order, and if they cannot be bothered to respond, they should not be permitted to press forward with the case.
10. The claimants oppose the imposition of an unless order. They say that the sanction of a strike out of the whole claim is unjust and disproportionate. They say that the purpose of the questionnaires is to enable the reliance issue to be tried at trial 1, and that has nothing to do with the case based on presumed reliance or dishonest delay, and they say it would be unfair to strike out their claims in full when what they have failed to do is provide information about which reliance categories they fall under.
11. They also say that there have been some difficulties in the provision of information for some of the funds. They ask until 5 November 2021 as a final deadline. They say that if there is a sanction it should be that the relevant claimants should not be allowed to pursue a claim under RCs 1 to 3.
12. I prefer the approach proposed by the defendant. It seems to me that, so much time already having passed, it is necessary to impose a proper sanction with real teeth. The claimants have had, as I have said, a good deal of time to provide these answers. I do not agree with the submission that an unless order is unduly draconian. If the answer of the remaining claimants is that they do not rely on RCs 1 to 3, then they can say so in an answer to be provided within a deadline. If they cannot even be bothered to provide an answer by the deadline, then I do not think it is appropriate that they should be allowed to continue as a claimant in the proceedings. Such an order is not burdensome or disproportionate.

13. I repeat that the court's order was intended to allow an orderly process for the selection of claimants, and that is something that each and every claimant has to participate in.
14. So I agree with the defendants' submission that the order should be that unless the relevant responses are provided by a certain date, the claims of that claimant will be struck out. I also consider that the claimants' proposed deadline of 5 November 2021 is too late because the defendants are required to select sample categories by 10 November 2021. I will order the remaining questionnaires to be served by 4.00 p.m. on 2 November 2021. That will give the defendants a little over a week thereafter to finalise their selections. I take into account that the defendants must already have done some work on selecting their proposed sample claimants based on the information they have already received. They will be able from 2 November to decide whether to make any changes to their proposals.
15. I also order that the claimants shall be entitled to rely on all questionnaires served by that date, including those which had been served since 17 September 2021.