



Neutral Citation Number: [2024] EWHC 3240 (Ch)

Case No: PT-2014-000002

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

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

Date: 13 November 2024

Before:

MR JUSTICE RICHARDS

Between:

MR JOHN STUART SALMON

Applicant

- and -

THE CHIEF LAND REGISTRAR
(sued as “UK Land Registry”)

Respondent

THE APPLICANT appeared In Person

MS K YATES (instructed by the Government Legal Department) appeared for the Respondent

Approved Judgment

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MR JUSTICE RICHARDS:

Introduction

1. Mr Salmon strongly disagrees with various judgments that have been made against him since 2012. However, I consider that the factual summary that I am about to give sets out a reasonably uncontroversial background to the applications before me.
2. On 11 April 2012 His Honour Judge Hand QC made an order (the **2012 Order**):
 - i) requiring Mr Salmon to join with Ms Dwyer in conveying the freehold title to a property (the **Property**) to Ms Dwyer and Mr Small;
 - ii) ordering that if Mr Salmon refused to do so a District Judge of the court could execute the relevant Form TR1; and
 - iii) ordering the Chief Land Registrar of the Land Registry to register Ms Dwyer and Mr Small as proprietors of the Property.
3. Mr Salmon did not comply with the 2012 Order and so a Form TR1 was executed by District Judge Langley on 12 January 2013. HM Land Registry registered Ms Dwyer and Mr Small as proprietors of the property.
4. Mr Salmon requested HM Land Registry to reverse the registration of Ms Dwyer and Mr Small as proprietors, but HM Land Registry refused to do so. Mr Salmon brought judicial review proceedings in connection with that refusal naming “UK Land Registry” as defendant. It is common ground that this was a reference to the Chief Land Registrar who was the proper defendant to the claim. Mr Nicholas Padfield QC, sitting as a judge of the High Court, gave Mr Salmon permission to bring judicial review proceedings on 3 December 2013.
5. The application for judicial review was heard by Simon J, as he then was, on 23 June 2014. Simon J gave an *ex tempore* oral judgment dismissing the application for judicial review, awarding the Chief Land Registrar his costs and certifying Mr Salmon’s application for permission to appeal against that judgment as totally without merit. The summary I have just given of Simon J’s order was indeed the precis that Mr Salmon gave in his application to the Court of Appeal for permission to appeal stamped as received by the Court of Appeal on 14 July 2014.
6. No sealed copy of an order perfecting Simon J’s oral judgment and order has been found despite a thorough search. Both sides infer that no sealed order was ever produced, although the evidence does show that (i) counsel for the Chief Land Registrar at the hearing before Simon J (Ms Yates who appears today) prepared a draft minute of order, (ii) the Chief Land Registrar’s solicitor sent that draft minute of order to Mr Salmon in the morning of 24 June 2014 for comment and (iii) when Mr Salmon did not respond with comments, Ms Yates sent the draft minute of order to Simon J’s clerk by email at 15.52 on 24 June 2014.
7. The Court of Appeal refused to accept Mr Salmon’s application for permission to appeal because it was not accompanied by a sealed order from Simon J. Court of Appeal staff wrote to Mr Salmon on 17 July 2014 suggesting that, once he had a sealed order, he could apply out of time for permission to appeal and could refer to

late receipt of the sealed order from Simon J in support of that application. There is no suggestion that Mr Salmon ever did so because he still does not have a sealed order.

8. Simon J became Simon LJ in 2015 and retired in 2020.
9. Mr Salmon is extremely critical of both the 2012 Order and Simon J's judgment. He says that both HHJ Hand QC and Simon J got the law wrong. Mr Salmon's position, as I understand it, is that:
 - i) While a High Court judge has by s39 of the Senior Courts Act 1981 (the SCA) the power to nominate someone to execute a conveyance, that power had to be exercised in two stages. Put shortly, Mr Salmon argues that a district judge could be nominated to sign the Form TR1 only following a separate hearing that took place after Mr Salmon failed to execute it himself.
 - ii) Mr Salmon also says that HHJ Hand QC, sitting as a judge of the County Court, had no power similar to that of the High Court judge that I have just described. He says that the power in s38 of the County Courts Act 1984 (the CCA) is not sufficient. Mr Salmon's position is that a County Court judge could only permit a district judge to execute the Form TR1 in exercise of the power in s38 of the CCA if a High Court judge had first made an order under s39 of the SCA requiring Mr Salmon to execute that form, but he had failed to do so.

The applications before me

10. I have two competing applications before me. The Chief Land Registrar's application under CPR 3.1(m) asks for an order confirming that Simon J dismissed the judicial review claim on 23 June 2014.
11. Mr Salmon's competing application is put in the alternative:
 - i) Mr Salmon's first application (although it was the second that he pursued in his oral submissions) requests a further hearing of his judicial review application at which his arguments on s39 of the SCA and s38 of the CCA are, as he puts it, to be "properly considered" in contrast to what he characterises as Simon J's inadequate consideration of it.
 - ii) Mr Salmon's alternative application request is that he be given what he referred to as a "a proper sealed order" disposing of his judicial review claim.
12. Mr Salmon and the Chief Land Registrar are not greatly apart on Mr Salmon's second application (summarised in paragraph 11.ii)). However, the Chief Land Registry strongly opposes the first application summarised in paragraph 11.i). Given that Mr Salmon continues to press that application, the matter cannot be dealt with by consent and today's hearing has been necessary.

The report of Simon J's judgment

13. Before dealing with Mr Salmon's applications, I address some points that have been made about an apparent record of Simon J's judgment. That document bears the neutral citation number [2014] EWHC 3552 (Ch). A search of that citation on

Westlaw reveals a judgment of Simon J with someone at Westlaw having prepared an abstract of it. A search of the National Archives and BAILII under that citation returns nothing.

14. As well as an electronic version of the document, Westlaw also has a PDF. That document is entitled “Approved Judgment” but under that appear the words “(Draft for approval)”. The PDF document on Westlaw appears to be the same as the document described as Simon J’s judgment in the hearing bundle. The ICLR website also has a version of the document described as an “Approved Judgment” but without the words “Draft for approval” underneath.
15. In correspondence with the Chief Land Registrar, Mr Salmon has suggested that the document in question is either some kind of forgery or, perhaps more benignly, was never approved by Simon J.
16. I am unable to accept those conclusions for the following reasons.
 - i) The document appearing on both Westlaw and the ICLR is consistent with Mr Salmon’s own contemporaneous note of what Simon J said as recorded in Mr Salmon’s application for permission to appeal to the Court of Appeal in 2014.
 - ii) The judgment is consistent with the manuscript note of the judgment that Ms Yates made in 2014.
 - iii) The document contains none of the typographical errors or mistakes that one would expect if a transcript were made of Simon J’s judgment which was never approved.
 - iv) An email chain with Epiq Global on 23 and July 2024 confirms that (i) Epiq Global prepared the transcript of Simon J’s judgment, (ii) Epiq Global sent the draft Judgment to Simon J for approval on 23 October 2014 and (iii) the judgment was returned, approved, on 28 October 2014. Ms Diane Ely, a Senior Operations Manager at Epiq wrote in that email chain that “I am as sure as I can be that the judgment ... is approved”.
 - v) I take judicial notice of my own experience of approving transcripts of oral judgments. The words “Draft for approval” frequently appear in draft uncorrected transcripts. I can quite believe that if, when correcting the judgment, Simon J or his clerk or Epiq forgot to delete those words they could have found their way into the version as published.
17. I therefore conclude that the document in the bundle published on the ICLR’s website and on Westlaw is indeed an approved record of Simon J’s judgment.
18. Simon J’s judgment did deal with the points that Mr Salmon explained to me on s38 of the CCA and s 39 of the SCA. The relevant passages are paragraphs [19] to [21] of the judgment which both rejected Mr Salmon’s arguments based on a “two stage process” and his argument that a County Court judge lacked power to appoint a nominee to execute the Form TR1:
 19. The claimant's first argument was that since no High Court judge had made an order directing anything to be done within

the meaning of section 39(1) of the Senior Courts Act the order of Judge Hand was made without jurisdiction and was invalid. The second argument was that section 39(1) of the Senior Courts Act requires a staged approach: first, an order of the court requiring something to be done; second, a failure or omission to do what must be done; third, a consideration of what order should then be made in the light of what has happened and in the interests of justice.

20. In my view both these points are wrong. As to the first point, the effect of section 38 of the County Courts Act is that, save for specified exceptions, the judge has the same power as a High Court judge in a High Court action. The effect is to read into section 39(1) of the Senior Courts Act the words "county court" so that its effect is that where the county court has given or made an order directing that a person execute a document and that person fails to do it then the county court can direct that a document be executed by a nominee. That is what Judge Hand ordered.

21. As to the second point, the claimant is right, at least to a limited extent, there must be a staged approach, but that does not mean that each stage cannot be dealt with in a single order. There had been full argument over a day in front of the judge and there was no need for a further hearing to consider as a separate question whether the court should order a nominee to sign the order. The judge must have had in mind the possibility that the claimant would not comply with the order and provided for that contingency.

19. I quite understand that Mr Salmon does not agree with that analysis of the relevant statutory provisions, but Simon J clearly addressed the arguments that Mr Salmon had made.
20. Simon J also concluded that there was in fact no need to address the points of construction of s38 of the CCA and s39 of the SCA that Mr Salmon was advancing. That was because Simon J held that, if Mr Salmon was dissatisfied with the 2012 Order, he should have sought to appeal against that order rather than bringing judicial review proceedings when HM Land Registry acted in accordance with it.

Mr Salmon's first application

21. With that background I can now turn to Mr Salmon's first application summarised in paragraph 11.i). I am going to dismiss that application for what is, in effect, a rehearing.
22. The reason for this is simple: there can be no rehearing in circumstances where Mr Salmon's application for judicial review has already been heard and dismissed. I do not think authority is needed for that proposition. However, to the extent authority is needed, paragraph 43.23 of the current edition of *Phipson on Evidence* states that a final adjudication of a legal dispute is conclusive as between the parties to the

litigation and their privies as to the matters necessarily determined and the conclusions on those matters cannot be challenged in subsequent litigation between the same parties.

23. On page 5 of his application notice Mr Salmon submitted that the judicial review proceedings were, because of the absence of a sealed order, “*de facto* adjourned”. I do not accept that. Simon J’s dismissal of the judicial review application took effect when he gave his oral judgment. That follows from CPR 40.7, since his judgment contains no suggestion that the dismissal was to take effect on any different date.
24. I also reject Mr Salmon’s suggestion that Simon J’s oral judgment was an unreasoned “opinion”; it was not. Mr Salmon has given too much weight to Simon J’s references to his “view” (in paragraph 20) or his “judgment” in (paragraphs 22 and elsewhere). Judges sometimes use that kind of phraseology saying “in my opinion” or “in my judgment”. However, it is entirely clear that Simon J was giving an oral judgment disposing of the case and an oral order dismissing the judicial review application and awarding costs.
25. It is not for me today to decide whether Simon J’s judgment did or did not engage fully with Mr Salmon’s arguments. That should not be interpreted as a coded message that I regard the judgment as deficient; I most certainly do not. As I have said, the points that Mr Salmon has explained to me were dealt with at paragraphs 19 to 21 of Simon J’s judgment. However, the central point is that the judgment has been given, the order has been pronounced and there can be no rehearing. If Mr Salmon is or was dissatisfied with Simon J’s order, his remedy is or was to seek the permission of the Court of Appeal to challenge it.
26. I do not accept Mr Salmon’s explanation, advanced in his reply, that there has been some deliberate attempt to suppress Simon J’s sealed order so as to prevent Mr Salmon from taking the matter any further. Mr Salmon did not give any real grounds for that view. He did not say who was behind the attempts to “suppress” the sealed order. He referred in general terms to his status as a published author of a book intended to support litigants in person but, as I think he fairly accepted when he was making his oral submissions, today is not the time or venue for me to decide whether “authority figures” have some hidden agenda to interfere with his interests.
27. The application to the extent it requests a rehearing is totally without merit. There is no rational basis on which I could order a rehearing of something that has already been determined.

Mr Salmon’s alternative application

28. Mr Salmon’s alternative application is on its face sensible. He seeks a sealed order recording the order of Simon J. The Chief Land Registrar seeks something substantially similar. Mr Salmon did say in his skeleton argument that he should obtain some “compensation” for late delivery of a sealed order. The point was not pursued in oral submissions and I have no claim for compensation before me. Indeed, it is not clear who Mr Salmon says should pay him the compensation or how much. I will not, therefore, order that any party pay compensation.

29. I am therefore going to dismiss Mr Salmon's alternative application, not because it is wrong for him to want some sealed order recording the judgment and order of Simon J, but because (i) I consider the Chief Land Registrar's formulation is better and (ii) I cannot allow both the Chief Land Registrar's application and Mr Salmon's alternative application. The Chief Land Registrar's proposed order does not contain the references to "compensation" that Mr Salmon was seeking to advance. Moreover, it is fully drafted and sets out clearly what is being sought whereas Mr Salmon's proposal is not accompanied by a draft order.

The Chief Land Registrar's application

30. I will allow the Chief Land Registrar's application with some amendments to the draft order that I will go through with the parties after this judgment. It strikes me as sensible to declare in a sealed order that Simon J made orders set out in the schedule thereto on 23 June 2014. That approach preserves the status quo. The costs order that Simon J made has not been enforced and the Chief Land Registrar accepts it is now too late for him to enforce that costs order. Making the order in the way that the Chief Land Registrar suggests preserves that effect and avoids inadvertently restarting the clock for a costs order to be enforced against Mr Salmon.
31. Finally, Mr Salmon has expressed dissatisfaction at the prospect that his time for permission to appeal might have run out and he still has not, as matters stand, received a sealed order. That is not a matter for me. I have no power to grant Mr Salmon permission to appeal against Simon J's order as Simon J has already refused permission.
32. Mr Salmon does not need me to tell him that he may be greeted with a degree of scepticism from the Court of Appeal if he seeks to appeal some ten years after the event against Simon J's order. The Court of Appeal might ask why Mr Salmon did not chase up a sealed order earlier. However, ultimately this is not a matter for me either. On receipt of the order that I propose to make it will be open to Mr Salmon to seek permission to appeal from the Court of Appeal against Simon J's order if he wishes to. It is not for me to say how that application will be determined.

Costs

33. At the conclusion of the hearing, the Chief Land Registrar applied for his costs. Mr Salmon did not contest the principle that he should pay the costs given that his applications had failed and those of the Chief Land Registrar had succeeded.
34. During her submissions on costs, I asked Ms Yates some questions about the reasonableness and proportionality of the costs that the Chief Land Registrar had incurred. I asked why, for example, Mr Salmon should be ordered to pay the Chief Land Registrar's costs associated with the (ultimately unsuccessful) search for a sealed order. I queried whether doubt on the reasonableness of those costs should be resolved in favour of Mr Salmon as the paying party.
35. Mr Salmon, however, declined my invitation to make submissions on the amount of costs he should be ordered to pay. This was not because of his failure to appreciate that the court would consider submissions in this regard. Mr Salmon had shown himself to be an intelligent man with a grasp of, for example, the provisions of s38 of

the CCA and s39 of the SCA. His position, simply put, was that (i) he could not afford to pay any costs that he was ordered to pay (ii) he was confident of ultimately being vindicated in the Court of Appeal and therefore (iii) there was no utility in him making submissions as to the level of costs that he should be ordered to pay.

36. Mr Salmon was entitled to take that approach if he chose to. Since he did so, I made an order that he should pay the Chief Land Registrar's costs in the amount set out in his schedule of costs.
37. I refused Mr Salmon's oral application for a stay of execution of the costs order pending his proposed appeal. Mr Salmon did not put forward evidence of his financial situation (simply saying that he could not afford to pay any costs order). He accepted that enforcement of the costs order would not stifle his proposed appeal. In those circumstances, I saw nothing to displace the usual rule that an appeal, or proposed appeal, against an order should not operate as a stay of execution.

(This Judgment has been approved by the Judge)

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