



Appeal Ref No: QA-2022-000166

[2023] EWHC 1814 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/07/2023

Before :

THE HONOURABLE MR JUSTICE TURNER

Between :

ANNA CHRISTIE

Claimant

- and -

MARY WARD LEGAL CENTRE

First Defendants

- and -

ANDREW DYMOND

Second Defendant

The Claimant in Person

Benjamin Wood (instructed by **Anthony Gold Solicitors LLP**) for the **First Defendant**

The Second Defendant did not appear and was not represented.

Hearing date: Wednesday 5 July 2023

Judgment Approved by the court

<p>If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.</p>
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The Hon Mr Justice Turner :

INTRODUCTION

1. There is no shortage of civil cases in which well-intentioned attempts to hasten victory have had the very opposite effect. The CPR provide for a number of such tempting routes including: the hearing of preliminary issues; strike outs; and summary judgment. Where all goes smoothly and according to plan these can prove to be very valuable tools. This case is a stark example of what can happen when things go wrong.

THE APPEAL

2. This is a claim in professional negligence brought by the claimant against the two defendants. The first defendant acted as the claimant's solicitor and the second defendant as her barrister.
3. This appeal is brought by the claimant against the decision of Master McCloud who acceded to an application brought by the first defendant for summary judgment under CPR 24.2(a)(i) and/or the strike out of the claim under CPR 3.4(2)(a).
4. The underlying case in respect of which the defendants are alleged to have acted negligently can be outlined in relatively concise terms because the applications were based on the working premise that the primary facts upon which the claim was pleaded would be made out. In short, the first defendant solicitors contended that, on any view of the facts, they were entitled to rely upon the advice of the second defendant counsel in respect of his specialist advice as a complete answer to any case which they may otherwise have had to answer. This argument succeeded before the Master whose decision on the point now comes to this court by way of appeal with the permission of the single judge.
5. A distinct basis upon which both of the defendants sought summarily to dispose of the claims was based on the assertion that it was statute barred having been brought in excess of the relevant period of six years after the cause of action arose. These applications failed and are also the subject of a separate appeal to the High Court before Soole J in respect of which arguments have been heard but, so far as I am aware, judgment has yet to be handed down.

BACKGROUND

6. The claimant instructed the first defendant in 2012. As the tenant under a long lease of premises at 28 Pallant House, Tabard Street SE1 ("the property"), she had accrued a substantial debt to her landlord, Southwark Council ("Southwark"), incurred as a result of unpaid service charges. Southwark duly started proceedings to forfeit the lease.
7. The claimant instructed the first defendant to act as solicitors on her behalf and they duly instructed the second defendant to advise in writing.

He recommended that the claimant should sell the property and pay off the arrears to Southwark out of the proceeds of sale. On 30 July 2013, the property was duly sold and the arrears were paid off.

8. The claimant now contends that she was badly advised. In the broadest of terms, she claims that the County Court had the power to grant relief by attaching the service charge arrears as a loan secured by a charge against the property. This solution would have enabled her to continue living in the property and she would have avoided the losses she has incurred as a result of the forced sale.
9. The claimant did not commence proceedings against the defendants until 13 July 2019. Both defendants sought to strike out the claims on the basis that they were statute barred. They alleged that at least some loss had been sustained by the claimant before the property had been sold.
10. On 7 April 2021, the limitation arguments were unsuccessfully ventilated before Master McCloud whose reasoned judgment is reported at ***Christie v Mary Ward Legal Centre*** [2022] P.N.L.R 25.
11. However, at the same hearing, the Master found that the first defendants were bound to succeed on the ground that, even if the legal advice which the claimant had received were both negligent and causative of loss, they were entitled to rely upon counsel's advice and thereby defeat the claim ("the reliance defence"). The first defendants were thus granted summary judgment on the ground that the claimant had no real prospect of success in her substantive claim against it.

THE APPEAL

12. The claimant contends that the Master's decision was flawed both procedurally ("the procedural point") and substantively ("the substantive point").
13. The procedural point taken is that the defendants had indicated that they were approaching the hearing before the Master on the basis that she would be ruling solely upon the limitation points and not upon the reliance defence. Accordingly, the claimant was taken unawares and was deprived of the opportunity properly to advance her case on the latter issue before it was decided against her.
14. The substantive point taken is that the Master was wrong, in any event, to find that in the circumstances of this case to conclude that the first defendants were bound to win on the reliance defence.
15. On 16 February 2023, Ritchie J gave permission to appeal on both issues.

EARLY PROCEDURAL HISTORY

16. The first defendants applied to strike out the claim on 30 January 2020. The application was made on the grounds both of limitation and the reliance defence.

17. The matter was originally listed for hearing on 20 May 2020. The first defendants' skeleton argument articulated concern that the time estimate for the hearing may not be sufficient for the reliance defence issue to be considered and suggested, on behalf of both defendants, that the reliance issue should be adjourned to a later date in the event that they were unsuccessful on the limitation points. Notwithstanding this suggestion, however, the skeleton argument did go on to address the reliance defence.
18. In the event, this hearing did not go ahead and the matter next came before the court nearly a year later on 7 April 2021. It was on this day that the Master made the decision on the reliance issue in favour of the first defendants which is the subject matter of this appeal.

NO APPLICATION FOR PERMISSION OUT OF TIME

19. The Appellant's Notice was not filed until 15 July 2022.

20. CPR 52.12 provides as far as is relevant:

“52.12 — **Appellant's notice**

- (1) Where the appellant seeks permission from the appeal court, it must be requested in the appellant's notice.
 - (2) The appellant must file the appellant's notice at the appeal court within—
 - (a) such period as may be directed by the lower court at the hearing at which the decision to be appealed was made or any adjournment of that hearing (which may be longer or shorter than the period referred to in sub-paragraph (b)); or
 - (b) where the court makes no such direction, and subject to the specific provision about time limits in rules 52.8 to 52.11 and Practice Direction 52D, 21 days after the date of the decision of the lower court which the appellant wishes to appeal.
 - (3) Subject to paragraph (4) and unless the appeal court orders otherwise, an appellant's notice must be served on each respondent—
 - (a) as soon as practicable; and
 - (b) in any event not later than 7 days, after it is filed.”
21. No direction having been given under 52.12(2)(a), the time limit within which the claimant was obliged to serve her Appellant's Notice expired about fourteen months before she actually served it.
22. CPR 52BPD provides:
- “3.2
Where the time for filing an appellant's notice has expired, the appellant must include an application for an extension of time within the appellant's notice (Form N161 or, in respect of a small claim,

Form N164) stating the reason for the delay and the steps taken prior to making the application.

3.3

The court may make an order granting or refusing an extension of time and may do so with or without a hearing. If an order is made without a hearing, any party seeking to set aside or vary the order may apply, within 14 days of service of the order, for a hearing.”

23. In Form N161, the claimant asserted, wrongly, in section 5 that the Notice had been lodged with the court in time. No extension of time was applied for under section 10 Part B and no reasons or evidence was provided to account for the delay under section 11.
24. Her explanation for this in oral argument before me was that she had attempted to file her Appellant’s Notice within the period of 21 days but had been wrongly advised by court staff that no notice could properly be served until a copy of the sealed order of the Master could be produced. The first defendants did not seek to challenge the truth of this account but invited me to conclude that, over the year which followed, the claimant had, at some stage, lost her appetite for the appeal and had only sought to resurrect it as a result of a very late change of mind.
25. In the event, it would appear that when Ritchie J gave permission to appeal on 16th February 2023 it was under the under the understandable but false impression created by the inaccuracies in the Appellant’s Notice that it had been lodged in time. No extension of time had been granted because none had ever been asked for.
26. It would have been open to the first defendants to seek to set aside the order of Ritchie J on the basis that he had granted permission under a false impression created by the claimant.
27. CPR 52.18 provides:
“Striking out appeal notices and setting aside or imposing conditions on permission to appeal
52.18
(1) The appeal court may—
 - (a) strike out the whole or part of an appeal notice;
 - (b) set aside permission to appeal in whole or in part;
 - (c) impose or vary conditions upon which an appeal may be brought.
(2) The court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.”
28. In *Kovarska v Otkritie International Investment Management Limited* [2017] EWCA Civ 1485, the single judge had granted an extension of time

in the granting of permission to appeal. The respondent successfully applied to the full court to set aside permission on the ground that the single judge had been seriously misled as to the circumstances in which the delay had occurred.

29. In my view, the first defendant had all the information it needed to deploy CPR 52.18 when the order of Ritchie J was served upon it.
30. One potential way of approaching the procedural irregularity may have been for the first defendants to have sought to list an application under CPR 52.18 at the same time as the hearing of the substantive appeal to provide for a retrospectively rolled up type of hearing. I do not criticise the first defendant for choosing not to respond formally to the misunderstanding of the single judge which arguably tainted the permission stage but, in the circumstances of this case, particularly bearing in mind that the claimant, who has acted as a litigant in person throughout, was not acting with a deliberate intent improperly to circumvent the Rules, I take the view that this appeal should proceed on the basis that flawed, but unchallenged, permission has been given. I will therefore confine my analysis to the substantive merits or demerits of the appeal rather than to reopen the question as to whether permission to extend time would, or should hypothetically, have been given if the single judge had been fully informed of the delay.
31. Accordingly, I now proceed to address the procedural and substantive issues in respect of which permission to appeal was given.

THE PROCEDURAL ISSUE

32. At the heart of the procedural issue is the claimant's case that she was unfairly taken by surprise when the reliance point was raised at the hearing before the Master on 7 April 2021. She claims that she was entitled to expect that only the limitation issue would be argued and she was thus not prepared adequately to put her case on the reliance point.
33. However, a careful review of the evidence of what occurred before, during and after that hearing renders this contention completely unarguable.
34. The first defendants' application notice of 30 January 2020 identified both the reliance issue and the limitation issue as grounds upon which the claim should be struck out or upon which summary judgment should be given.
35. The applications had originally been listed to be heard on 20 May 2020. In their skeleton argument of 18 May 2020, the first defendants fully set out their arguments in respect of the reliance issue and appended thereto a copy of the relevant paragraphs of Jackson and Powell on Professional Liability.
36. There was some concern that the two and a half hour estimated length of hearing allotted to hear the defendants' applications on hearing of 20 May 2020, which was adjourned, may have been insufficient for both the

limitation and reliance arguments to be heard. However, in contrast, the effective hearing before the Master on 7 April 2021 had been allotted a full day of court time.

37. On 7 October 2020, the court gave formal notice that the purpose of the hearing of 7 April 2021 was to adjudicate upon the first defendants' application of 30 January 2020 which included both the limitation and the reliance issue. There is no evidence that the court, at any stage, had indicated that the reliance issue was not going to be determined at the 7 April hearing.
38. Furthermore, the claimant's own skeleton argument for the purposes of the 7 April 2021 hearing expressly engages with the reliance issue. There is no suggestion whatsoever in this document or any other that the parties were proceeding in the expectation that only the limitation point would be ventilated at the hearing.
39. Early in the course of the hearing of 7 April 2021, counsel for the second defendant said:

“And we propose dealing with limitation firstly and separately from the merits-based arguments on the basis that the court will assume that Miss Christie's merits are good and will just consider limitation.” This passage was relied upon by Ritchie J as indicating that all parties had proceeded on the basis that only the limitation issue should be considered at the hearing. This, in my view, was a misinterpretation of what counsel was proposing. In fact counsel was saying no more than that limitation should be distinctly considered at the outset of the hearing and not that the reliance issue was intended to be shelved for another hearing on another day. His suggestion related to no more than what had been considered to be the most convenient sequence in which to address the issues within the same hearing. Ritchie J also assumed that the defendants' skeleton arguments stated that the reliance argument should be put back to another date because only two hours had been given for the hearing. In fact, the defendants' skeletons did not raise any such contention and the hearing had been listed not for two hours but for a day. I wish to make it absolutely clear that I make no criticism whatsoever of Ritchie J's order based as it was upon what was, at best, an incomplete picture. The claimant had included the first defendants' skeleton of the 2 hour hearing of May 2020 and not the one day hearing of April 2021 in the appeal bundle.
40. In this context, I note that the claimant has attempted to adduce into evidence a skeleton argument and witness statement dated 14 and 16 September 2022 respectively. Both were created well after the hearing to an attempt to demonstrate what she would have argued had she been put on reasonable notice that the reliance issue would have been determined on 7 April 2021. I have no reason to doubt the genuineness of her submissions before me on the point but, in the light of my finding that on any objective

analysis she had been on full notice of what issues were liable to be argued at the hearing, I find no proper basis upon which she ought to be given a second bite of the cherry.

41. For the reasons given above, I have no hesitation in rejecting the procedural ground of appeal. I turn now to the substantive ground.

THE SUBSTANTIVE GROUND

42. Having heard argument from both the first defendants and the claimant, the Master gave an *ex tempore* judgment on the reliance issue.

43. She referred to the relevant passages in Jackson and Powell. They provided:

“Summaries of the law

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The law has been helpfully summarised in two Court of Appeal decisions. In *Locke v Camberwell HA* it was stated in these terms:

- “(1) In general, a solicitor is entitled to rely upon the advice of counsel properly instructed.
(2) For a solicitor without specialist experience in a particular field to rely on counsel’s advice is to make normal and proper use of the Bar.
(3) However, he must not do so blindly, but must exercise his own independent judgment. If he reasonably thinks counsel’s advice is obviously or glaringly wrong, it is his duty to reject it.”

In *Ridehalgh v Horsefield* the court amplified the last point:

“A solicitor does not abdicate his professional responsibility when he seeks the advice of counsel. He must apply his mind to the advice received. But the more specialist the nature of the advice, the more reasonable is it likely to be for a solicitor to accept it and act on it.”

44. I do not consider that any legitimate criticism can be levelled at the Master’s statement of the law. The question arises, however, whether in the context of an application for summary judgment the operation of the relevant legal principles precluded any real prospects of the claimant’s success .

45. CPR 24.2 provides, in so far as is material:

“Grounds for summary judgment

24.2

The court may give summary judgment against a claimant ... on the whole of a claim or on a particular issue if—

- (a) it considers that—
(i) that claimant has no real prospect of succeeding on the claim or issue; ... and

- (b) there is no other compelling reason why the case or issue should be disposed of at a trial.”
46. Of central importance to the Master’s conclusion was her finding that the first defendant solicitors were “generalist solicitors” and “without specialist experience”.
47. In my view, the question as to the level of expertise to be attributed to any given solicitor in the context of the reliance defence is not necessarily one which can be adjudicated upon with sufficient confidence in the context of a summary judgment application.
48. In this case, the first defendants at least arguably held themselves out as having specialist expertise in housing and debt. As the first defendants admit and aver in paragraph 3(a) of their defence, the claimant attended a county court hearing at Lambeth on 18 June 2019. The duty solicitor, Sarah Pearce, assisted her and advised the claimant to contact the first defendants. Ms Pearce could be taken to know of the first defendants’ areas of practice having been a former colleague of Susan Holman of the first defendants who went on to represent the claimant in the circumstances which form the basis of the present claim. The extent to which the first defendants’ expertise may have extended beyond that of a mere generalist is a matter upon which some evidence may well shed light and is relevant to the reliance defence. As Simon J observed in Regent Leisuretime Ltd v Skerrett [2005] EWHC 2255:
“68. Even in a specialist area the court will consider the extent to which it is reasonable to rely on the advice of counsel. For example, the acceptance of poor advice in a specialist field may be reasonable by a solicitor who is inexperienced in the field but unreasonable where the solicitor is also experienced in the specialist field.”
49. The notes to CPR 24.2 of the White Book state at 24.2.3:
“v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No.5) [2001] EWCA Civ 550;
vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation

into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] F.S.R. 3”

50. It is to be noted in this context that as the Master was giving her judgment, the claimant sought to interject saying: “You haven’t heard all the evidence.” Of course, it was unwise to seek to interrupt the Master but the point was not without force.
51. In my view, the level of expertise of the first defendant was not susceptible to a confident characterisation of “mere generalist” on the very limited information available to the Master.
52. In particular, as alleged in paragraph 27 of the Particulars of Claim, the claimant asserts that “other leaseholders who had much greater debts were granted loans and charging orders and did not lose their home”. During the course of oral argument, the claimant drew my attention to a schedule of what purported to be many similar cases in which Southwark had reached accommodation with tenants in this way. This schedule was not before the Master but may (I put it no higher than that) be the sort of “evidence that can reasonably be expected to be available at trial”. Whether the expertise of the first defendant was such as to mandate a further exploration of such an option, regardless of the advice of counsel, is not an issue suitable for summary judgment. The first defendants suggest that the persons listed in the claimant’s schedule may not have been in the same position as the claimant (who had been the subject of a Tribunal determination) or that the sort of arrangements reached may not, in any event, have precluded the making of a later order for sale. Again, these are no issues which I consider to be amenable to summary adjudication.
53. I ought, however, to make some practical observations:
 - (i) The Particulars of Claim is badly drafted. It contains a hotch-potch of allegations many of which appear to be of dubious relevance. Others are very broadly and vaguely drafted and would benefit substantially from further particularisation. I indicated to the claimant that there is a limit to the extent to which “catch-all” drafting can be deployed as a vehicle through which otherwise unparticularised allegations may later be introduced. Obviously, any application to amend must be judged upon its merits and it would be premature for me to comment on the prospects of success.
 - (ii) The significance or otherwise of my judgment on this appeal depends upon the outcome of the limitation appeal in respect of which judgment is awaited. If the defendants are successful then my decision is rendered academic.

- (iii) Although the claimant has been successful on her reliance argument, she has failed on her procedural argument which took up a considerable proportion of the court's time. I invite the parties to agree upon an appropriate order for costs. In the absence of agreement, I will decide the issue upon written submissions.
- (iv) This is not a straightforward case. The claimant, of course, is fully entitled to choose to represent herself but it could well be advantageous for her to seek legal advice before proceeding further with this litigation.

CONCLUSION

54. I am satisfied that the issues relating to the reliance issue are not suitable for determination by way of summary judgment and on this ground will allow this appeal and quash the order of the Master for summary judgment. Directions for the further progress of this claim should be sought from Soole J whose determination of the limitation issue will determine what further steps will have to be taken by the parties.