



Neutral Citation Number: [2023] EWHC 316 (KB)

KB-2024-000326

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday, 15th February 2024

Before:
FORDHAM J

Between:
CHANTAL WELDON
(an executor of the will of J R Weldon, deceased)
- and -
(1) GODIVA MORTGAGES LIMITED
(2) GEOFFREY C DAVIES and MATTHEW J
PERRETT (receivers appointed by the First
Defendant)

Claimant

Defendants

The **Claimant** in person
Martin Horne for the **Defendants**

Hearing date: 15.2.24

Judgment as delivered in open court at the hearing

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.

FORDHAM J

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

FORDHAM J:

Introduction

1. I have today dealt with the ‘return date’ hearing, relating to an interim injunction. The purpose of a return date, in a case where the injunction was obtained “without notice” – as this one was – was to allow the persons against whom the injunction order has been made to make any representations to the Court opposing the continuation of the order. Continuation is opposed by the Defendants. I have been assisted by Mr Horne and by a witness statement of James Mitchell, which unfortunately had not been provided to the Court in sufficient time for pre-reading, but which I have been able to read and consider.
2. It is fair to say that there are problems on both sides with documents provided to the Court. An important document described by, and relied on by, the Claimant today is an in-principle remortgage offer, dated two days ago (13 February 2024). This was subsequently supplied by the Claimant to Mr Horne, and to me via my clerk. It had not been included in the Court’s materials, including a bundle helpfully provided this morning by the Claimant. I have considered all the materials and all the points that have been made. I need not record here in this judgment, but I will record in a recital to my order the materials that were before me, and considered by me, for today.

6 Week Continuation

3. I have decided to continue the injunction that has been made in this case, for a short further period time. Ultimately, the Claimant has told me that the family really needs three to four weeks, to be able to bring the remortgage through, so that the funds are released to pay off the £80,000 or so arrears owed to the First Defendant, that this case is all about. I am going to continue the Order for a further six weeks. That will allow for the time-frame for the remortgage to be effected, and the funds transferred. But it will also allow for time for any materials to be provided by being filed and served well ahead of the next hearing, if needed, in this case. I will direct that there is to be a further hearing in 6 weeks’ time. Any Judge dealing with that hearing will know the opportunity that the 6 week continuation of this injunction has afforded, and will know that my clearly communicated expectation to the parties is that the Court should be provided with all and any further materials ahead of that hearing, in good time.

Opportunity for Witness Statement

4. At Mr Horne’s invitation, I am going to direct that within 14 days the Claimant shall have the opportunity to file and serve a short statement from her mother to confirm the mother’s intentions regarding the remortgage (of the mother’s property) and the onward payment in discharge of the arrears owed to the First Defendant. The Claimant’s mother is not before this Court today and it would not be right to make any court order that “requires” her to do anything. That is why I have been careful to use the word “opportunity”. If that opportunity is taken, it will provide the Defendants and the Court with some reassurance about what we have all been told today about the remortgage. I will include a liberty to apply for the Defendants. The reason for that is that, if the opportunity I am giving is not taken, and if the Defendants feel that they

want to bring the matter back before a Judge more speedily, that is a course they will be able to consider. I am not encouraging it, nor discouraging it; I am providing for it.

Discussion

5. I have considered the points that have been raised by the Defendants, in seeking to persuade me today to discharge the interim injunction order. What the order does – and all that it does – is to prohibit the Defendants from selling or contracting to sell, or authorising or allowing anyone else to sell or contract to sell, a property at 12 Merton Road in London E17 (“the Property”). One of the points made in Mr Mitchell’s witness statement is that he tells me the Defendants have not entered into any contract for sale, nor has the Property been marketed, and that there are no negotiations underway. It is said, in those circumstances, that there is a ‘prematurity’ as to the issues being raised, or which could be raised, in legal proceedings. However, I was also told by Mr Horne – by way of amplification – that estate agents have been engaged by the Second Defendants (who, I interpose, are receivers appointed by the First Defendant as mortgage lender). No assurance or undertaking has been offered. The whole point of the continuation of the order – which is what is being opposed – is that it bites only to prohibit a sale or contract for sale. It would, of course, have been entirely open to the Defendants to make clear that they were prepared to allow a further window of time, before engaging in any sale or contract to sell the Property.
6. In outline, the position is this. The Property (mortgaged to the First Defendant) was the house of the Claimant’s late father, who died in 2021 overseas. There was a substantial delay in the Claimant being able to obtain the relevant documentation relating to his death for the purpose of dealing with probate and his estate. The Claimant is one of two named executors of the will. I was shown (exhibited by Mr Mitchell) an email communication from the Claimant’s brother, who is the other named executor. On both sides, points have been raised about the position of the co-executor. It is unnecessary and would be inappropriate for me to say any more about that aspect, and I certainly do not need to determine it.
7. The Defendants’ position is this. The Second Defendants are properly appointed receivers of the Property; that they have entered into possession pursuant to an appointment by the First Defendant as the lender, under the applicable mortgage provisions and in accordance with the law. The Defendants, as receivers and lender, have raised concerns about what cause of action the substantive claim could possibly have. They invite me to conclude that there is no “serious issue to be tried” in this case. They also point to the overall delay and the passage of time.
8. The observation is made by Mr Mitchell that it appears to him – at least in terms of any cause of action – that the Claimant’s “direct concern” is about “sale below market value”, but that this is something in respect of which there would be a financial remedy, meaning an injunction is unnecessary, inappropriate and premature. But it is very clear to me that what this case is about is not “sale at an undervalue”. It is all about whether a beloved family home, which the Claimant’s late father materially himself built, should be sold at all, in order for the Defendants to recoup these mortgage arrears. Such a sale will be unnecessary if the arrears owed to the First Defendant are able to be paid off. Mr Horne has accepted today that if the debt is repaid by a family member then the receivers’ job (the Second Defendants) will then be at an end and the lender’s legitimate interests (the First Defendant) would have

been discharged. In those circumstances, the Property would then remain in the Claimant's late father's estate and all matters relating to the estate and probate can then run their course. As at today, as Mr Horne accepts, the Property belongs to the late father's estate.

9. It is unnecessary to go into detail about the long sequence of events. But it is, in my judgment, right to mention these key features.

i) On 3 October 2023, the Claimant sent an email, following up on previous communications about her late father's death certificate and its verification, and attaching documents needed by the First Defendant as the lender. The whole point was that the Claimant was wanting to regularise the position as to the mortgage of the Property with the First Defendant, and deal with it. In this email, the Claimant said she was having to take further steps relating to probate, and that she would keep the First Defendant informed at each step completed. That email expressly referred to this step:

Arrange finance

That was clearly a reference to being able to arrange the finance that could pay off the mortgage arrears, owed to the First Defendant, in respect of the Property. The email concluded by saying:

Please keep me informed of any steps I may need to take as this process is unknown to me.

ii) By mid-January 2024, the Claimant had instructed solicitors, who communicated on her behalf with the receivers (the Second Defendants), they having been appointed (by the First Defendant) on 7 December 2023. Mr Horne says that that appointment arose against the backcloth where there was a concern that the Property was or might be occupied by tenants. Be that as it may, the solicitors' correspondence led to an email response from the Second Defendants dated 19 January 2024, which said:

We ... note your comments in respect of your client wishing to arrange a re-mortgage so the account can be redeemed. Please keep us informed with any progress in this regard.

iii) That email from the Second Defendants went on to say that they could provide the redemption statement that needed to be obtained from the lender. I have seen the redemption statement document dated 30 January 2024 that was subsequently sent by the First Defendant, by post, to the Claimant's late father's correspondence address. The Claimant tells me that in fact she saw it for the first time on 10 February 2024.

iv) This is what I have been told by the Claimant about the current position. There is now a remortgage deal in principle related relating to remortgaging the mother's property, to raise £130,000 from which the arrears owed to the First Defendant could then be discharged. This came two days ago following, I understand, a valuation.

10. I am entirely satisfied that there is in this case a “serious issue to be tried” and that the balance of justice and convenience decisively comes down in favour of allowing a short further period of time, for the raising of the funds which would mean that the Defendants functions are discharged, and their legitimate interests addressed. I am conscious that I am only dealing with this case at a short hearing, having considered the documents provided and the points that have been raised. I have no doubt that there would be a lot more to say, on both sides of the court. Everybody in this case tells me they are seeking to avoid any unnecessary further costs or legal costs. In all the circumstances, I am not going to make directions for steps in the proceedings, such as a service of a defence in response to the claim form which has been served. I will consider, with the assistance of the Claimant and Mr Horne, the precise terms of my Order.
11. I mention that a point was taken by the Defendants about a “breach” by the Claimant of the judge’s directions, in the order for the interim injunction (7.2.24), requiring service of documents on the Defendants. The Defendants own experience yesterday afternoon and this morning is illustrative of the fact that sometimes things happen later than they should. There was a two hour delay by the Claimant in serving certain documents. Whilst I have noted this, I am entirely satisfied that it is not a feature of the case which should have weighed against the Claimant. I have given it no weight.

Costs and Expenses

12. In discussing, with the Claimant and Mr Horne, the order which I should now be making in this case, the Claimant has raised a point about the level of the arrears which would need to be paid off. She says this. The First Defendant could and should have proceeded differently. They did not need to appoint receivers. The cost of the receivers did not need to be incurred. If they had dealt with the matter reasonably, they would have been communicating with her about the arrears. She would have been in a position to proceed in the way that she, and other family members, have. The overall arrears calculation now includes some £2,042 which are receivers’ costs and expenses which were entirely avoidable, if reasonable action had been taken. In continuing the interim injunction, I should go on to make a ruling that the £2,042 should be struck off the arrears.
13. In my judgment, it would not be proper for me to make such a ruling. This hearing was to deal with the continuation of the interim injunction. I accept that, in doing so, ancillary questions can arise which are appropriate for inclusion in the Court’s order. But I do not see this as falling within that category. Instead, this is a particular complaint and dispute, about the reasonableness of costs and expenses that have been incurred and therefore the level of arrears that need to be discharged. No such dispute or complaint was raised in any of the Claimant’s application notices nor in the claim form. This was not a matter raised in any notice for today’s hearing.
14. Mr Horne submits that the inclusion in the arrears of costs and expenses is a contractual entitlement. He has shown me the relevant provision from the exhibited mortgage conditions. He also submits that there is, in principle, a remedy in CPR44PD §7.3 which he says is the route by which an account can be sought of costs and expenses, in conjunction with which their reasonableness can be impugned. He was not able to assist me as to whether that route could, in principle, be available after arrears have been paid off, so that in essence arrears can be discharged “without

prejudice” to the subsequent pursuit of that remedy (that is not a criticism because he was not on notice that this point was going to be raised).

15. It may be that the Claimant will be able to dispute the reasonableness of these receivers’ costs and expenses. It may be that she could amend her claim to seek to include this as a dispute. It may be that the CPR44PD route, as described by Mr Horne, is available to her, or could in the future become available to her. It may be that the discharge of arrears from the mother’s remortgage could be “without prejudice” to any such remedy as the law permits. Be all of that as it may, I am in no position to make a ruling, at this ‘return date’ hearing, on the reasonableness or unreasonableness of these costs and expenses. In fairness to Ms Weldon, I ought to make clear that – even if she had included this in an application notice for today – I still would not have considered it right to try to evaluate this substantive question of the lawfulness, reasonableness and recoverability of charges and expenses. It may be that this aspect of the case is amenable to resolution, or there may be a continuing dispute about it. It could be that this aspect could imperil the course which the continuation of this injunction is designed to enable. All of that will need to be considered by the parties. But it would not be right or appropriate for me to say any more than that. In all the circumstances, I decline the invitation to rule today that the £2,042 be struck off the arrears.

15.2.24