

Neutral Citation Number: [2019] EWHC 2644 (Ch)

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT OF ENGLAND AND WALES
CHANCERY DIVISION
PROPERTY, TRUSTS AND PROBATE DIVISION**

Claim No. PT-2018-000566

Royal Courts of Justice,
Rolls Building, Fetter Lane,
London EC4A 1NL
Date 4 October 2019

Before

Peter Knox Q.C.

(sitting as Deputy Judge of the High Court)

Between

**(1) ALPESH PATEL
(2) BISHOPS WALK DEVELOPMENTS LIMITED (suing on behalf of itself and
all other shareholders in Fourstream Capital Limited)
Claimants**

And

**(1) ASHANK PATEL
(2) MOHAMMED BABAR IQBAL
(3) FOURSTREAM CAPITAL LIMITED
(4) EQUITY REAL ESTATE (ARIES) LIMITED
Defendants**

MR MATTHEW PARKER (instructed by Bryan Cave Leighton Paisner LLP) for
the Claimants

MR DONALD LILLY (instructed by Stokoe Partnership Solicitors) for the First
Defendant

Hearing date: 25 September 2019

SUPPLEMENTAL JUDGMENT

1. On Thursday 26 September 2019, I handed down judgment subject to editorial corrections on the claimants' application for revised defences to be served by the first, second and fourth defendants. After receiving such corrections (and making some of my own), I sent a perfected judgment to counsel for the claimants and for the first defendant (Ash) on the afternoon of Monday 30 September 2019.

2. In the main part of the judgment, I dealt with all the outstanding complaints about Ash's defence. Having done so, I made an order for him to file and serve a revised defence to the allegations to meet the complaints made by the claimants in items 4, 6, 7(b), 8, 9, 9A, 10, 11, 12, 12A of the schedule attached to their application, but I did not deal with, or make an order on, those in items 1, 2, 3, 5 and 7(a), as these complaints had already been dealt with by Ash to the claimants' satisfaction in his counter-schedule in answer to the application. The order which I proposed, which was set out in paragraph 57, was that "*in relation to each of the relevant allegations*" (i.e. those in items 4, 6, 7(b) and 8 to 12A) Ash had to set out in a revised defence (a) whether the allegations were admitted, denied, or neither admitted nor denied but were ones that he required the claimants to prove; and (b) the reasons for any denials, including the facts relied upon to put forward a different version of events from that given by the claimants if he intended to advance any such different version.
3. In paragraph 59, I went on to deal with the position in relation to the second and fourth defendants (Babar and Equity Aries), and made "*the same orders*" against them as well, meaning that they too must provide the relevant clarification in relation to the same items as ordered against Ash. I did not, however, make any ruling one way or the other as to whether they should also provide clarification on items 1, 2, 3, 5 and 7(a), as I had not received any oral submissions from Mr Parker specifically directed to these items in the course of the hearing. Nor, of course, had either Babar or Equity Aries made any submissions on these items, as they had not put in any evidence in opposition to the claimants' application, nor did they attend the hearing or indeed make any communication with the court about it.
4. On the afternoon of Tuesday 1 October 2019, I received (through my clerk) from Mr Parker for the claimants a draft order which had been agreed between himself and Mr Lilly for Ash. In the attached schedule, this provided for the order to extend, in the case of Babar and Equity Aries, not only to items 4, 6, 7(b) and 8 to 12A, but also to items 1, 2, 3, 5 and 7(a). In his covering email, Mr Parker very properly accepted that he had not focussed on these items at the hearing, but pointed out, as was the case, that the application extended to them, and that in paragraph 32(2) of his skeleton argument, he had mentioned, albeit briefly, that there were certain allegations to which Ash had not pleaded (for example, items 1, 5 and 9A) on the footing that they were allegations against Babar and Equity Aries; with the consequence that neither of the latter two had a pleaded case in relation to them. I should add that the justifications for seeking an order on these further items were set out in the schedule attached to Mr Glynn-Jones' second witness statement in support of the application.
5. As the order has not yet been drawn up, and as my judgment did not deal with items 1, 2, 3, 5 and 7(a), I am satisfied that I have jurisdiction to make a ruling on this point, albeit late in the day, by this supplemental judgment. This does not involve altering or correcting the judgment I have already given, but supplementing it. Further, as neither

Ash nor Equity Aries has taken any part in this application or attended it, I am satisfied that I can do so now on Mr Parker's invitation, even though they have not, as I understand it, been served with the draft order or the correspondence relating to it. Having chosen to take no part in the application or the hearing at all, they have waived their right to be notified in advance of submissions arising out of the judgment and on the appropriate form of order before it is drawn up. (Mr Parker, I should add, has made it clear that they will in due course be notified of the correspondence on the form of order.)

6. Finally, in my judgment it would be appropriate to make a ruling now on Mr Parker's further submissions, because it was only by oversight that they were not pursued by him orally or dealt with in my judgment, and it would lead to further cost and delay if I were to leave the point to be dealt with in future. This is a material consideration, as the cases in paragraph 40.2.1.3 of the White Book make clear, to the effect that it is preferable, where a point has not been dealt with by a judgment, for it to be raised with the judge for him to provide clarification, rather than left as a ground of complaint for an appeal. By analogy, it would be convenient to deal with these further items now in the same order as the other items, rather than by making an order excluding them but with liberty to restore the application for further hearing on them. This is because (save for two items I mention below) they all turn on the ruling of law I have made in relation to the other items, that is to say, a bare denial of a specific allegation cannot be justified on the basis that a positive defence to the claim as a whole is put forward.
7. As to the merits, I will extend the order I have made in relation to items 4, 6, 7(b) and 8 to 12A to items 1, 3, 5 and 7(a) (but not to item 2) for the following reasons:

Item 1

- (1) Paragraph 6A of the Re-Amended Particulars of Claim alleges that Equity Aries is owned and controlled by Ash and Babar, but (by the adoption of paragraph 22 of Ash's amended defence) this is met by a bare denial, without any reasons being provided, contrary to rule 16.5(2) of the CPR. (For example, is it denied because it is owned by one but not the other, or because it is owned by neither?) Further, this must be a matter within both Babar's and Equity Aries's knowledge.

Item 2

- (2) This complaint relates to Babar's and Equity Aries' adoption of paragraph 13 of Ash's amended defence, in which he acknowledges that the claimants are entitled to an account in relation to the "Run Off SPVs". The claimants complain that this does not go far enough, and that Babar and Equity Aries must explain what has happened to the Run Off SPVs in their defence. However, although that may be a ground for a request for further information under Part 18 of the CPR, it is not a

ground for saying that Babar and Equity Aries have failed to comply with rule 16.5, because this is not an allegation which purports to answer any particular allegation in the Re-Amended Particulars of Claim. Accordingly, I decline to make an order on this item on this application (which is brought only on the basis of a breach of CPR rule 16.5).

Item 3

- (3) Paragraph 18(2) of the Re-Amended Particulars of Claim alleges that Ash and Babar arranged for loans totalling £842,500 from one Avnish Patel of Verdi Construction. By their adoption of paragraph 33 of Ash's amended defence, Babar and Equity Aries meet this allegation by a bare denial, without giving reasons (e.g., is the denial because they deny the source, or the amount, or some other reason) contrary to rule 16.5(2). Further, this must be a matter within Babar's knowledge.

Item 5

- (4) Paragraph 38(3) of the Re-Amended Particulars of Claim alleges that Babar purported to declare a trust over shares in Equity Real Estate Lambda, when he did not even hold such shares. By adopting Ash's amended defence, Babar and Equity Aries adopt paragraph 48.3, which simply says "*Ash does not plead to paragraph 38(3) as such facts and matters concern Babar*". The adoption of this plea makes no sense coming from Babar or Equity Aries, and fails to comply with rule 16.5(1) as it does not say what their case is on this allegation. Although it might be said that by reason of rule 16.5(5) this failure means that they are deemed to admit the allegation, the proper course in my judgment, given the obvious ambiguity in their current plea, is that they should be ordered now to clarify now what their case is on it.

Item 7(a)

- (5) Paragraphs 46 to 51 of the Re-Amended Particulars of Claim plead that it was agreed that Ash and Babar would assign 25% of ERED London to BWD, and that although Ash then signed a stock transfer form for this purpose, the transfer was never completed, even though Alpesh paid his agreed £800,000. By adopting paragraph 54 of Ash's Re-Amended Defence and Counterclaim, Babar and Equity Aries adopt bare denials of all these allegations, without giving reasons, contrary to rule 16.5(2).
8. Accordingly, I shall make an order in the form agreed by the parties, save that it is not to extend to item 2. I would accordingly ask them to draw up a revised order to make this alteration.

Peter Knox Q.C.

4 October 2019

