



Neutral Citation Number: [2020] EWHC 2132 (Ch)

Case No: BL-2020-000674

**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**INTERIM APPLICATIONS LIST (ChD)**

Rolls Building  
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Fetter Lane  
London  
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Judgment date: Thursday, 7 May 2020

**Before:  
THE HONOURABLE MR JUSTICE FANOURT**

**B E T W E E N:**

- 1) **STEPHEN ROBINS**
- 2) **JOHN GABBITAS**

The Applicants

**and**

**MARGARET FURNISS**

The Respondent

**MR NIKKI SINGLA QC** appeared on behalf of **the Applicants**  
**MS BRIE STEVENS-HOARE QC** appeared (pro bono and through the CLIPS scheme) on behalf  
of **the Respondent**

Hearing date: 7 May 2020

**Approved Judgment**

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**MR JUSTICE FANCOURT:**

1. This is an application by two partners in a firm of solicitors called Gabbitas Robins, in Marlow, made against another partner in the firm, Margaret Furniss. As that sentence alone will indicate, the dispute that has arisen between them is an unfortunate one. It relates to a question of the delivery up of certain files that were in the custody of Mrs Furniss in late April 2020.
2. The application is for delivery up of the files by Mrs Furniss to the Applicants, on the basis that the Applicants are partners in the firm, and are entitled to have access to the files, which was being denied - so the Applicants contend - by Mrs Furniss.
3. A bare outline of the background is the following, and it starts with the COVID-19 restrictions which, as is well-known, were imposed with effect from 24 March 2020. Prior to that time, all three partners in the firm had been working from the firm's offices, but they were then obliged to close the offices from that date. Normally the files remain in the office and partners and other fee earners are not permitted, save for good reason, to take them out of the office. Mr Robins' evidence is that his firm is not at the forefront of information technology developments and it is very much a paper-based practice. Accordingly, when the period of lockdown started, the partners took with them to their homes a number of files that would be necessary for them to continue to work on.
4. The Respondent, Mrs Furniss, who looks after the family law matters that the firm deals with, took home at that stage eight client files on which she was either working or where hearings were expected in the near future. By 3 April 2020, however, unconnected with the COVID-19 lockdown, Mrs Furniss had decided that she was going to resign as a partner of the firm. She had, in fact, been made an offer of a position at another firm that she intends to take up. She gave notice on 3 April 2020 to Mr Robins that her last day in the office would be 22 May 2020 and that she would cease to be a partner on 31 May 2020. Mr Robins received that notice on 6 April 2020 and immediately after that there ensued correspondence between Mr Robins and Mrs Furniss about a number of issues relating to her departure.
5. One of the matters raised very promptly by Mrs Furniss was the need to notify clients of the firm whose affairs she was responsible for as the partner in charge of family law matters, so that in accordance with the SRA Code of Conduct they were in a position to make an informed choice as to which solicitor was to act for them in the future. Mrs Furniss at that time sent a draft suggested notification to Mr Robins. Mr Robins' stance, however, was that no notice should be sent out at that time and, in any event, no notice should be sent out by Mrs Furniss without the agreement of the other partners.
6. By 22 April 2020, Mr Robins and Mrs Furniss had not resolved these matters or other matters relating to the terms on which Mrs Furniss was to depart from the firm. By that stage, however, Mr Robins had taken steps to recruit a new family law practitioner to work at the firm after Mrs Furniss's departure.
7. At that stage, Mr Robins became extremely keen to have the files that Mrs Furniss had taken with her in March returned to the firm's offices. Various reasons why he would want

the files to be in the firm's offices are given by Mr Robins in his witness statement. It is unnecessary for me to go into the various assertions that are made and the suggestions made by one side against the other side because, as I will explain, it is common ground that the motives for one partner requiring to have access to the files are irrelevant.

8. On 22 April 2020 Mr Robins wrote to Mrs Furniss requiring the return of the files that she had taken, and indicating that he would be willing to copy them so that she could still have access in order to continue to work. Further letters to similar effect, but in increasingly strong terms, were written on 23 and 24 April 2020.
9. The stance being taken by Mrs Furniss, at that stage, was that she would return the files no later than 22 May 2020 when she left the firm, but that there was no entitlement for Mr Robins or his other partners to have access to the files before that time. I will refer shortly to two emails that were written by Mrs Furniss before the application was issued.
10. On 29 April 2020 Mr Robins wrote what, effectively, was an email before action, giving an ultimatum to Mrs Furniss to agree to return the files to the office and indicating that if she did not agree and did not do so then, with regret, an application would have to be issued to the court. Once again, the stance taken at that time by Mrs Furniss was that Mr Robins was not entitled to have the files returned to him at that time.
11. I have been shown, by Ms Stevens-Hoare QC, who acts under the CLIPS scheme on behalf of Mrs Furniss, the evidence put forward by Mrs Furniss and a number of documents that seem to show (and I accept that they show) that Mrs Furniss had in mind, when retaining the files, the importance of being able to continue to service the needs of the clients of the firm whose affairs she was looking after, and indeed to ensure that appropriate notice was given to the clients that she would be leaving the firm, explaining to them that they had a choice as to their representation for the future.
12. By 22 April 2020, Mr Robins was still taking the stance, in fairly trenchant terms, that contact should not be made by Mrs Furniss with the clients, until sometime relatively shortly before her departure from the firm. On 23 April 2020, Mrs Furniss explained to Mr Robins why she considered that to be unacceptable.
13. Shortly after the application was issued on 1 May 2020, Mrs Furniss did in fact write a perfectly proper email to the clients, informing them of her intended departure and of the fact that the firm would continue to be able to look after their affairs, but that she would be happy to provide any information about their future representation. By that stage the application had been issued, and it was served on Mrs Furniss on 1 May 2020, first in draft and then the sealed copies.
14. On 4 May 2020, Mrs Furniss indicated that she would return all the files to the office and has done so. There was, therefore, a change of stance by Mrs Furniss, as a matter of timing clearly following the issue of the application and the service of the evidence relied upon. The Applicants, understandably, submit that it was only as a result of the issue of the application that that change of stance was achieved. Therefore, given that the hearing followed very shortly afterwards, on 7 May 2020, today, they should have their costs of the application and the hearing.
15. Once Mrs Furniss had delivered up the files, there was an attempt made to agree the

question of costs so that this hearing was unnecessary, but Mrs Furniss declined to agree to pay the Applicants' costs of the application. I therefore have to decide the question of costs without being required to decide the underlying merits of the application. However, as to that, it is conceded by Ms Stevens-Hoare that, as a matter of law, Mr Robins was entitled to require the files in relation to the eight clients to be provided to him.

16. Mr Singla QC, on behalf of the Applicants, submitted that as a matter of partnership law the position was entirely clear that each of the partners in the firm has a right to have access to the papers, including the firm's files and that, as I said earlier, the motives of any partner in requiring to be given such access are wholly irrelevant. Those propositions of law are accepted by Ms Stevens-Hoare.
17. It therefore follows that the Applicants were entitled to require the files to be provided to them. Nevertheless, Ms Stevens-Hoare submits that, as a matter of discretion, bearing in mind the circumstances in which the application was made, the court should not award the Applicants their costs of the application, but should make an order that there be no order as to costs.
18. The reasons that are advanced for that are essentially five, as I understood it. First, that the application was unnecessary; second, that the application was precipitate; third, that the files were not really required by Mr Robins or his partners for any particular reason and there was no urgent need for them; fourth, that Mr Robins was being obstructive in relation to the matter of communicating Mrs Furniss' departure, which was Mrs Furniss's proper overriding consideration in retaining the files; and fifth, that Mrs Furniss was acting perfectly properly in her conduct of the files and in the best interests of her clients.
19. As to the necessity for the application, I am not persuaded by Ms Stevens-Hoare that this application was unnecessary. It seems to me to be clear that but for the issue of the applications the files in question would not have been returned by Mrs Furniss to Mr Robins until 22 May 2020 or such earlier date as Mrs Furniss no longer had any need for them.
20. The reason I reach that conclusion is two emails that were sent by Mrs Furniss shortly before the application was issued, at the time when Mr Robins put her on notice that if she did not return the files he would regrettably have to make an application. The first of those emails is dated 28 April 2020, so two days before the application was issued, in which Mrs Furniss says to Mr Robins, 'I have stated previously that I will continue to manage my files and deal with them until my intended departure on 22 May 2020. I will therefore not return the files as requested and you know you have no basis to request this from me'. The second email is dated 29 April 2020, one day before the application was issued, and in response to Mr Robins' email before action, as I have described it. Paragraph 4 of Mrs Furniss' reply says this:

'I have already stated that I will return the files to you on or before 22 May 2020. You do not have a basis to request the return of those files before then. My position on this is, as stated previously, and I will not repeat it. Any proceedings you suggested in this regard are entirely unnecessary'.
21. Ms Stevens-Hoare submits that in the circumstances which applied at the time, that is to say the pandemic-related practical difficulties, Mr Robins should have recognised that

Mrs Furniss was doing the best that she could to deal with matters in an orderly way, matters that is relating to the interests of her clients and her own impending departure from the firm, and that therefore it was unnecessary for any application to be made. I cannot accept that argument. Once it is accepted that Mr Robins was perfectly entitled, for any reason, to have access to the files, there was no basis on any ostensibly good reason, to refuse that request; yet refusal is exactly what Mrs Furniss did in the emails of 28 and 29 April. In view of the emails from Mr Robins previously sent, and in view of the change of stance which the application clearly caused, I consider that the application was necessary.

22. As to the argument that the application was precipitate, Ms Stevens-Hoare submits that Mr Robins should have been content to leave the files with Mrs Furniss until after the relevant clients had been notified of her intended departure, which was done on 1 May 2020, although the Applicants had no knowledge that she would take that step at that time, and that given the pandemic-related difficulties, it was appropriate to leave Mrs Furniss to deal with matters in an orderly way.
23. However, that seems to me not to be an answer to the clear entitlement of Mr Robins and his partner to see the files. Mrs Furniss, still a partner for the time being, of course, equally had a right to access to the files, but there was no suggestion that Mr Robins had refused to allow such access; indeed he had offered to copy the files in his email of 22 April. It was suggested that Mr Robins' motive may have been to prevent Mrs Furniss having any access to the files at all thereafter, and that was her concern. However, in view of offer to copy the files, I cannot accept that that was the case. Mrs Furniss's right course, in any event, should have been to say: of course I accept your entitlement to have access to the files, but I need a copy too, and I am entitled to a copy too, so please provide a copy of the file urgently, once I have returned it to you. However, no such suggestion was made in those terms. Rather, as I have indicated, the stance was taken that Mr Robins had no entitlement to the files at all.
24. The third argument of Ms Stevens-Hoare, that there was no good reason for Mr Robins to have the files, is not a conclusion that I feel able to reach as a matter of fact. Various motives are attributed to Mr Robins, but that is not a matter that I am able to resolve on paper, in an application of this kind. The simple fact is that motive is irrelevant and that Mr Robins had an entitlement to the files that Mrs Furniss, as a solicitor, should have recognised. It is perfectly true that Mr Robins was not dealing as expeditiously with the question of informing the clients of the firm of Mrs Furniss' departure as he could have been, and possibly should have been. However, again, that that cannot of itself be a justification for Mrs Furniss refusing to allow Mr Robins access to the files. It could and should have been dealt with in a different way, which was essentially the way that Mrs Furniss did, in due course, deal with it. When she considered that matters could no longer properly be delayed, in discharge of her own responsibility as a solicitor she wrote a letter to the clients informing them in appropriate terms of her intending departure. That, it seems to me, is unconnected with the question of providing the files to Mr Robins.
25. I accept that Mrs Furniss was motivated by trying to do the right thing by her clients and in regulatory terms. However, that that of itself, for reasons that I have already given and need not repeat, is not a proper answer to the entitlement of the other partners to have access to the files. I therefore conclude that the application that was brought was necessary and not precipitate and in these circumstances this was a reasonable, though regrettable, application to have to bring. Mr Robins was, given the emails of Mrs Furniss on 28 and 29 April, left with no reasonable alternative.

26. In those circumstances, in my judgment, the Applicants should have their costs of the application. That is the end of my judgment.

Transcript from a recording by Ubiquis  
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