

Claim Ref. PT-2021-000572
NCN: [2023] EWHC 3087 (Ch)

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

The Rolls Building
7 Rolls Buildings
Fetter Lane
London

6 October 2023

Before:

MR JUSTICE MILES

Between:

MR SELWYN CAMPBELL

Claimant

-and-

CHIEF LAND REGISTRAR

Defendant

THE CLAIMANT did not attend and was not represented
MISS K YATES appeared on behalf of the Defendant

JUDGMENT
APPROVED

Mr Justice Miles:

1. This is the hearing of a number of applications. First, the claimant's application dated 3 July, but sealed on 2 July 2023, to consolidate this claim with five others and to revoke an order of HH Judge Hodge QC, dated 20 January 2022 ("the July application"). Second, the claimant's application made by notice dated 20 September 2023 to consolidate this claim with claim number PT-2023-000688 between the claimant and Barclays Bank UK Plc ("the Bank"), to adjourn this hearing and to transfer all of the applications to the Court of Appeal. That followed an informal application made by letter dated 12 September 2023 to transfer the July application to the Court of Appeal. Finally, there is the defendant's application made by notice dated 26 September 2023, by which the defendant seeks an Extended Civil Restraint Order (ECRO) or a Limited Civil Restraint Order (LCRO), to restrain the claimant from making any further claims or applications of relevant kinds.
2. At the hearing, the claimant was not represented and did not appear. He informed the court in advance that he would not appear. However, yesterday late in the afternoon, he served a skeleton argument, which I have read. I have also read two witness statements from him, both described as "second" witness statements, and a number of letters to the court including those written on 3 October and 4 October seeking the adjournment of this hearing. I have also read a document described as a notice of discontinuance dated 5 October which purported to discontinue the application dated 3 July 2023 and vacate this hearing.
3. I have decided to proceed in the absence of the claimant. This was the hearing of all of the applications. He is clearly aware of the hearing and has decided not to participate. He has attempted several times this week to have the applications adjourned or vacated and the court has declined to do that. Once applications are issued, it is for the court to decide whether to grant relief or dismiss them, and there are of course costs consequences and other possible consequences of bringing applications. Parties may choose not to move their application but there is still an application which the court is required to rule on. So there as being three formal applications before the court as well as the informal application by letter of 12 September 2023.
4. The background to this claim and the applications is long and complicated. In essence, the claimant has sought on many occasions to contend that a charge over his property which is registered on the Land Register in favour of the Bank is void for alleged non-compliance with the requirements of section 2(3) of the Law of Property (Miscellaneous Provisions) Act 1989, on the basis that the mortgage deed in question was executed unilaterally by the mortgagor without the signature of the mortgagee.
5. That issue has been conclusively determined between the parties in a judgment given by Judge Hodge in January 2022. That judgment appears to have been only one stage in a very long journey of litigation concerning the section 2 point. The full chronology is set out in the statement of Mr Finnerty dated 26 September 2023 in support of the defendant's application for Civil Restraint Orders.

6. The key points, as summarised in the skeleton argument of counsel for the defendant, are as follows. The mortgage in question was granted by a Deed dated 11 April 2002, originally in favour of Woolwich Plc, and which subsequently vested in the Bank. It is registered against the claimant's property in New Malden. The claimant has sought by various means to prevent the Bank from enforcing its rights under the Charge by relying on the argument based on section 2 of the 1989 Act. That culminated in the making of a General Civil Restraint Order in the Queen's Bench Division in proceedings number KB-2021-002430 between the Bank as claimant, the claimant as one of the defendants, and another defendant called Mortgage Five Zero Limited ("MFZ").
7. The first General Civil Restraint Order was made by Martin Spencer J on 24 June 2019. That was extended by Mr Richard Hermer QC, sitting as a Deputy High Court Judge, on 7 July 2021. That second order restrained any new proceedings, applications, appeals, or other process or action by the claimant which included the section 2 point without the prior permission of the Judge.
8. On 28 June 2021 the claimant issued the present claim against the Registrar seeking rectification of the Register of Title and/or an indemnity on the purported basis that the charge is void pursuant to section 2. This set of proceedings was issued in the short gap between the expiry of the first GCRO which expired on about 24 June 2021 and the making of the second GCRO on 7 July 2021, which meant that the claim was not in breach of either order. It is not therefore automatically struck out.
9. By a notice dated 30 September 2021 the defendant applied to strike out the proceedings and for reverse summary judgment. The claimant then issued his own application for summary judgment dated 16 November 2021. The defendant's application was heard by HH Judge Hodge QC on 20 January 2022 at a combined hearing alongside similar applications which had been made by five other litigants, namely, Shaun Campbell, Yolanda Lischiles-Schmidt, Andrew Graham, Gordon Southwood, and Floyd Wilson ("the other litigants"), who were also seeking to impugn mortgages that they had granted by bringing separate proceedings against the defendant in reliance on the same section 2 point in the series of proceedings also issued in 2021. One of those other litigants, Shaun Campbell is believed to be a relation of the claimant. It also appears that the other litigants had received the assistance of MFZ in bringing the claims. Neither the claimant nor any of the other litigants attended before Judge Hodge and instead submitted evidence and a joint skeleton argument.
10. By his order of 20 January 2022 Judge Hodge struck out and dismissed the claimant's claim. He also recorded that the claim was totally without merit for the reasons given in his judgment. He also noted that the claimants' summary judgment application had not been listed for the hearing but was totally without merit. In his judgment the judge considered the section 2 arguments in some detail and concluded that legally they were hopeless. This was the basis of the totally without merit certification. The claimant was also required to pay the defendant's costs on the indemnity basis. The related claims were also disposed of in like terms and the court made an ECRO against Shaun Campbell. The claimant did not seek to appeal the order of 20 January 2022 within the prescribed time limited or at all.

11. By a notice dated 3 January 2023 the defendant applied to transfer that claim to the County Court for the purpose of enforcing the costs order in the January 2022 order. On 11 January 2023 Chief Master Shuman made the transfer order.
12. The claimant then sought permission, under the second GCRO, to apply set aside the transfer order. Martin Spencer J made an order dated 8 February 2023 that the second GCRO would not apply to any step taken in the claim in these proceedings from 1 March 2023.
13. By notice dated 2 March 2023 the defendant applied to set aside or vary the order of 8 February 2023. That application was dismissed by Martin Spencer J on 31 March 2023. The Judge gave very brief reasons but it appears to me likely that his reason for dismissing the defendant's application was that he considered that all that was left in these proceedings was the enforcement action to be taken in respect of the costs order. It is certainly difficult to understand why any broader relaxation of the second GCRO could have been appropriate.
14. The claimant then applied to set aside the transfer order of 11 January 2023 by a notice of 15 March 2023. The application was heard by Deputy Master Arkush on 12 May 2023 who dismissed it as being totally without merit and required the claimant to pay the defendant's costs on the indemnity basis. Those costs appear to have been paid only on 21 September 2023.
15. The claimant applied to discharge the second GCRO by notice in the King's Bench Division proceedings dated 16 March 2023 but that application was dismissed on 20 March 2023. The second GCRO expired on or about 7 July 2023 so there is no extant GCRO. I understand that the Bank has applied for a further GCRO in those proceedings but that that matter has not yet been heard.
16. On 2 March 2023 Shaun Campbell became the subject of a GCRO made by Edwin Johnson J. The defendant also became aware that two of the other litigants whose claims have been dismissed by Judge Hodge on 20 January 2022 were subject to Civil Restraint Orders.
17. MFZ was subject to a public interest winding up petition in the Insolvency and Companies List which led to the making of a liquidation order on 4 April 2023.
18. I have already referred to the applications made by the claimant. The July application was to revoke the order of Judge Hodge made on 20 January 2022 on the basis that it contained a manifest error. The claimant also purports to act on behalf of the other litigants in their related claims by seeking a revocation of the orders made in dismissing their claims. They have each signed a document dated 3 July 2023 ("the consent letter") which agrees to a consolidation of the related claims with the current claim. The signature of Shaun Campbell is among those appearing on the consent letter, as are the signatures of two others who are both subject to Civil Restraint Orders.
19. I turn to the various applications before the court. The July application is to consolidate this claim with the five other related claims which were dealt with by Judge Hodge in his order of 20 January 2022 and to revoke that order. There is in

my judgment no rational basis, on which that application could conceivably succeed. If the claimant and the other litigants wished to challenge the decision of Judge Hodge embodied in the order of 20 January 2022 the route (and only route) available to them was to apply for permission to appeal which they have not done.

20. Judge Hodge dismissed the various claims and gave extensive reasons for doing so in his January 2022 judgment. The only point which is raised in the application and supporting evidence is the section 2 point. That was a point of law which was carefully considered and rejected by Judge Hodge as being totally without merit. The order he made dismissing the various claims was a final order in that it disposed of them once and for all. There is no conceivable basis on which the court could vary or set aside those orders under his powers under CPR 3.17. There is no suggestion of a change of circumstances.
21. The only challenge is the legal point under section 2 and the court will not allow a litigant to re-run an argument which was not only available but was in fact made at the hearing leading to the final order.
22. In addition, there is no rational basis on which the court could consolidate the present claim with the related claims given that they have all been finally dismissed - so that there are no further proceedings other than in respect of enforcement, and it is not suggested that there is any sensible basis on which they should be consolidated in respect of enforcement.
23. For these reasons I consider that the July application should be dismissed and also certify that it is totally without merit.
24. The application of 20 September 2023 was to consolidate this claim with a claim brought in these courts against the Bank and to adjourn the October hearing and transfer all the applications to the Court of Appeal. The defendant has not been served with a copy of the relevant claim against the Bank but the evidence before the court shows that those proceedings were struck out by Master Kaye in August 2023. It is clear from the material served in support of this application that it is again based entirely on the same section 2 point. I am entirely satisfied that the application should be dismissed. There is no purpose in consolidating the present proceedings with those against the Bank where the present proceedings have been dismissed. Moreover, it is clearly an abuse of process to ask this court to transfer proceedings (which already have been dismissed) to the Court of Appeal. There is no procedural basis on which this court has jurisdiction to do so. The only available procedural route is for an application for permission to appeal to be made to the Court of Appeal itself. That would have required an application within 21 days of the decision, or an application to bring the appeal out of time. Neither of these have happened. This court cannot transfer proceedings in front of it to the Court of Appeal. It is plain therefore that this application is entirely misconceived and there is no rational basis for it. I shall dismiss it and certify that it is totally without merit.
25. I referred earlier to the informal application made by letter of 12 September 2023 which was to transfer the July application to the Court of Appeal. I do not regard this as strictly an application before the court. It is important, particularly in cases of this kind, that applications are made using application notices rather than letters

to the court but for the same reasons as I have given in relation to the formal application, what was proposed in that letter was misconceived and was totally without merit.

26. I turn to the applications for a Civil Restraint Order. The application was for either a Limited Civil Restraint Order or an Extended Civil Restraint Order. It is clear that the threshold for a Limited Civil Restraint Order has been met. That requires the party to have made two or more applications which are totally without merit.
27. The threshold for an ECRO is where a party has persistently issued claims or made applications which are totally without merit. I am satisfied that that threshold has been met.
28. The court should not make an ECRO in circumstances where it considers that an LCRO would suffice, as the court should not go further than it is reasonably necessary and proportionate.
29. I am entirely satisfied that in this case an ECRO is justified. I have kept in mind and followed the guidance given by the Court of Appeal in the *Sartipy v Tigris Industries Inc* [2019] 1 WLR 5892 at paragraphs 25 to 37. I am satisfied that the claimant's overall conduct has entailed persistent litigation of the section 2 point, both in the King's Bench Division proceedings and now this claim - and it would seem in the recent BPC claim against the Bank.
30. I agree with the description given by the defendant of the claimant's pursuant of the section 2 point as dogged and also agreed with the submission that he is simply unwilling to take no for an answer. Specifically:
 - a. There are now five separate occasions where a claim or application has been certified as totally without merit. The next point is that the first GCRO and the second GCRO, which expressly concerned the section 2 point, spanned a four year period from about June 2019 to July 2023. It is proper to draw the inference that those two orders must have been prompted by a multiplicity of earlier totally without merit claims or applications by the claimant against the Bank.
 - b. The claimant used the gap of only about 13 days between the expiry of the first GCRO and the second GCRO to pursue the defendant in relation to the section 2 point by bringing these proceedings. The fact that this claim was issued so soon after the first GCRO expired supports the conclusion that the claimant was poised and ready to resume litigating the section 2 issue as soon as he was free to do so. I agree with counsel for the defendant that this shows that he is dogged in his pursuit of the point. Even after the fully recent judgment of Judge Hodge, the claimant appears to be obsessively wedded to the argument and is not prepared to take no for an answer.
 - c. The letter of consent is also support for the conclusion that the claimant not only seeks to pursue the point on his own behalf but also to recruit other litigants to further his cause and expand the reach of the litigation. This is so notwithstanding that three of the other litigants are themselves

subject to Civil Restraint Orders. I also take account of the fact that the claimant has issued the second claim against the Bank and while this does not directly affect the defendant, it again shows an unrelenting desire on the part of the claimant to litigating the section 2 point.

d. I also take into account the spate of activity from the claimant in the last few days leading up to this application. There were a number of further witness statements and letters, all of which reiterated the same section 2 point. Taking everything in the round, it appears that the claimant is pre-occupied to the point of obsession with the section 2 argument and that there is every reason to consider that he will seek to advance it unless restrained by the court.

31. A CRO acts as a filter to ensure that applications which lack any merit are not pursued, and it does so by requiring the permission of a designated Judge. It does not prevent meritorious applications being made but it does operate to stop unmeritorious ones. Where appropriate it is imposed in the interests not only of the other party or parties to the litigation but also the proper administration of justice. I am entirely satisfied that it is appropriate to make an ECRO in this case. No lesser order will suffice. I will also, for the avoidance of doubt, include in the order that it applies to any applications made in the current proceedings. Given the length and history of the litigation, I shall make an order for the maximum period of three years.