

Neutral Citation Number: [2022] EWHC 2445 (Comm)

Case No: CL-2022-000404

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**COMMERCIAL COURT**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 18 August 2022

Before :

**His Honour Judge Pelling QC**

Between :

(1) Stratton Mortgage Funding 2019-1 PLC; **Claimant**  
(2) Clavis Securities PLC;  
(3) Keycards Holdings Inc;  
and (4) Kessa Holdings Ltd

- and -

(1) Stratton Hawksmoor 2022-1 PLC; **Defendant**  
(2) Aline Sternberg;  
(3) CSC Directors (No. 1) Limited;  
(4) CSC Directors (No. 2) Limited;  
(5) Paivi Helena Whitaker;  
(6) Intertrust Directors 1 Limited; and  
(7) Intertrust Directors 2 Limited

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Adam Al-Attar (instructed by Bryan Cave Leighton Paisner (BCLP)) for the Counsel

Hearing dates: 18<sup>th</sup> August 2022

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**RULING**

**His Honour Judge Pelling QC**  
(11:57 am)

**Thursday, 18 August 2022**

**Ruling by His Honour Judge Pelling QC**

1. This is the hearing of an on-notice application to strike out claims brought by the claimants in these proceedings by the applying defendants.
2. The application was issued on 10 August and seeks orders that the claim be struck out pursuant to CPR Rule 3.42, alternatively that summary judgment be granted pursuant to CPR 24.2. Other relief is sought in the form of declarations and injunctions.
3. The part of the application I am concerned with at this stage is the applications to strike out or for summary judgment, since it is only if those applications succeed that the applications for declaratory and injunctive relief become relevant.
4. The applicable principles are those identified in the skeleton argument filed by the applicants. In summary, a court may strike out a statement of case if it appears there is no reasonable ground for bringing a claim - see CPR 3.42(a) - and may grant a summary judgment where there is no prospect of the claim concerned succeeding - see CPR rule 24.2(a). In each case the question which the court is concerned with is whether or not the claim, the subject of such applications, has a realistic prospect of success. If the claim has a realistic prospect of success then it must not be struck out, summary judgment must not be entered and the claim must go to trial.
5. So far as what constitutes a realistic prospect of success is concerned, that is the subject of the well-known tests identified by Mr Justice Lewison, as he then was, in Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch) at paragraph 15. In summary, the court must consider whether or not the claimant has a realistic, as opposed to a fanciful, prospect of success, with realistic claims being ones that carry some degree of conviction. The court is enjoined from conducting a mini trial on applications of this sort, but that does not require a court to accept at face value and without analysis something a respondent to such an application says. In reaching a conclusion the court is bound to take into account not only the evidence which is available, but evidence which might reasonably be expected to become available in the future, with a degree of caution being exercised in relation to the entry of summary judgment or the making of strikeout orders where the evidence may not be complete. The point is made by Mr Justice Lewison, however, is that all of that said, it is not uncommon for applications, particularly under Part 24, to give rise to short points of law and construction and the court should grasp the nettle and resolve such issues where the court is satisfied that all the relevant evidence is available. Exactly similar principles apply in relation to a strikeout application.

6. Turning now to this claim, it is contained in a claim form that identifies as the four claimants Stratton Mortgage Funding 2019-1 Plc, Clavis Securities Plc, Keycards Holdings Incorporated and Kessa Holdings Limited. The defendants, include as fifth, sixth and seventh defendants, a Ms Paivi Helena Whitaker, who is, on her case, an individual statutory or de jure director of each of the first and second claimants; and the sixth and seventh defendants are respectively Intertrust Directors 1 and 2 Limited, who are, on the applicant's case, corporate statutory or de jure directors of the first and second claimants.
7. The claim form sets out brief details of the claim in seven paragraphs. The substance of the claim is set out in paragraph 1 of the claim form which is in these terms:

"All the claimants seek damages against all the defendants for (i) unlawful means conspiracy and further or in the alternative (ii) causing loss by unlawful means. In addition or in the alternative the first and second claimants (together the 'Issuers') seek damages against the fifth to seventh defendants for breach of fiduciary duties in respect of but not limited to causing or purporting to cause the issuers to enter into one or more transactions despite being conflicted to do so and/or as a result or otherwise of secret or undisclosed inducements, commissions, bribes or benefits which have a monetary value. In addition or in the alternative the third and fourth claimant (together the 'Creditors'), as victims pursuant to sections 423 and 424 of the Insolvency Act seek damages and/or other consequential or incidental relief as set out in section 425 of the Insolvency Act 1986 or otherwise against all the defendants for causing or purporting to cause the issuers to enter into one or more transactions defrauding creditors by, inter alia and without limitation, causing or purporting to cause the issuers to enter into one or more transactions for consideration or value which, in money or money's worth, is significantly less than the value in money or money's worth of the consideration provided by the issuers with the primary or sole purpose of putting assets beyond the reach of creditors who may at some time make a claim against the issuers or otherwise prejudicing the interests of creditors in relation to the claim which they make."

Paragraph 2 is concerned with various declarations which are being sought or purportedly sought by the claimants. Paragraph 3 is concerned with injunctions purportedly sought by the claimants. Paragraph 4 is immaterial for present purposes. Paragraph 5 is concerned with interest, 6 with costs and 7 is a sweep-up provision for further or other relief.

8. The claim form contains a statement of truth in these terms:

"Statement of truth.

"The claimant believes that the facts stated in this claim form ... are true. I am duly authorised by the claimants to sign this statement.

Full name: Ajay Kumar.

Name of claimant ... all claimants.

"Signed ...

position or office held: director/attorney."

9. The first issue which arises concerns whether or not these proceedings were commenced in the name of either Stratton Mortgage Funding 2019-1 Plc or Clavis Securities Plc with the appropriate authority required for the commencement of proceedings in the name of corporate entities. As I have said, the claim has been brought in a claim form signed by Mr Kumar who represents on the face of the claim form that he is a director or "attorney" for each of the claimants, including Stratton and Clavis. The position adopted by the defendant applicants is set out in the statement of Ms Whitaker, the fifth defendant. In relation to the claim form to which I referred a moment ago, she asserts, at paragraph 18 of her statement, that the claim form falsely states that the Intertrust companies and Ms Whitaker had no authority to act for and on behalf of Stratton and Clavis, and represents that Mr Kumar is either a director or attorney of Stratton or Clavis, assertions which she maintains are false.
10. I am satisfied that in relation to Stratton, the Intertrust companies and Ms Whitaker, who she refers to in her statement as the Intertrust directors, were each appointed directors of Stratton on 1 April 2019 and that they have continued to be directors of the company ever since and that the procedures established within the governance documents applicable to Stratton for the removal of the director have not been satisfied, in that at no stage have any of the Intertrust defendants been removed, whether by special resolution, ordinary resolution or any other lawful or lawfully permitted means as directors of Stratton. By the same token, I am satisfied on the basis of the evidence that has been filed that Mr Kumar is neither the director of the company, nor its attorney.
11. I turn then to Stratton, which is addressed by Ms Whitaker in paragraph 21 of her statement, where she makes in essence exactly the same points in relation to Clavis as she made earlier in relation to Stratton. That evidence, which is set out at paragraphs 23 to 26 of her statement, and the documents which she refers to and which I was taken to at length in the hearing, establish very clearly that the Intertrust directors are the only true directors of the first and second claimants. The evidence also establishes to my satisfaction that the Intertrust directors are the only directors of Stratton.
12. In this connection it is now necessary that I refer to some evidence filed by Mr Artemiou, because that might suggest the contrary. There is exhibited by Mr Artemiou, in two statements that were filed in these proceedings, first of all, some documents which purport to be extracts from the register of current directors of both Clavis Securities Plc and Stratton Mortgage Funding 2019-1 Plc. Each purport to identify Mr Artemiou and Mr Kumar as directors of those companies.
13. Those documents are not accepted as genuine documents by the applicant for a variety of different reasons. For the avoidance of all doubt, an undertaking was offered by counsel on their behalf to file a supplemental statement, making precisely the points which he made as to why those documents ought to be rejected. In essence, first, the documents are not recognised as being genuine

extracts from the documentation of the governance material maintained by either Clavis or Stratton. Secondly, it is noteworthy the documents are dated 15 August 2022. Thirdly, it is noticeable that they are apparently certified as being true and complete copies of the original by someone who is described as being "a minister of religion." The point made by the applicants is that if these were genuine extracts from the books and records of the companies concerned, they would not have to be certified as true and complete copies of the original; they would be copies recognisable as such. Furthermore, for these purposes I'm bound to take account of the entries which appear in the records maintained by Companies House, which demonstrate the truth of what Ms Whitaker has said in her statement, those documents being exhibited to her statement.

14. I am satisfied that the documents on which Mr Artemiou placed reliance are not documents that I can safely rely on for present purposes, having regard essentially to the evidence set out by Ms Whitaker, and to veracity of the documents which are exhibited to her statement, including in particular the entries in the companies' register maintained at Companies House. In those circumstances I conclude that Mr Kumar is not now and never has been a director of either Clavis Securities Plc or Stratton Mortgage Funding 2019-1 Plc. In the alternative he describes himself as "attorney" of those companies. But there is no evidence at all which supports that proposition and the evidence which has been filed on behalf of the applicants demonstrates that that is not the case.
15. In those circumstances I am satisfied that the claims brought in the names of Clavis and Stratton are claims which were brought without authority and must be struck out. The only persons with authority to bring claims in the names of those entities are their current directors, and the current directors are the fifth, sixth and seventh defendants. They have not at any stage authorised the commencement of these proceedings. In those circumstances, as I say, that necessarily means that the claim brought by the first and second claimants against all defendants must be struck out.
16. The next issue which arises concerns commencement of these proceedings in breach of various court orders. Insofar as that is concerned, I can start with an order made by me on 3 December 2021, in proceedings commenced by Clavis Securities Plc and others against -- or purportedly commenced, I should say, by Clavis Securities Plc and others against various Intertrust entities, including Intertrust Directors 1 and 2 and Ms Whitaker. In paragraph 7 of that order it was directed as follows:

"If any further proceedings are commenced by or in the name of any of the individuals or entities identified in the first column of the Schedule hereto (titled 'Claimants/Applicants') against any one or more of the individuals or entities identified in the second column of the schedule Hereto (titled 'Defendants/Respondents'), the individual who has purported to sign the statement of truth on the claim form on behalf of the named Claimant(s) shall, at the

same time as filing the claim form, also file at Court (and at the same time serve on each Defendant) evidence given by way of witness statement attesting to his or her identity. Where evidence of the kind specified is not duly filed and served or is considered by a Defendant to be inadequate, that Defendant may apply, with the application to be determined by His Honour Judge Pelling QC if possible, for the proceedings to be struck out."

17. The schedule attached to that order identified under the heading, "Claimants/Applicants", Keycards Holdings Incorporated, one of the claimants in the current proceedings, and identified under the heading, "Defendant/Respondents", Intertrust Directors 1, Intertrust Directors 2 and Ms Whitaker. On the face of it, therefore, a claim has been brought by or in the name of Keycards Holdings Incorporated against those three defendants in circumstances where any such proceedings, if they were commenced, are to be supported by identification evidence. No such evidence has been filed and in those circumstances, it is said that Keycards Holdings Incorporated has acted in breach of the order by failing to produce the relevant identity evidence. I am satisfied that that order has been breached in the circumstances of this case for the reasons I have explained: no identity evidence has been produced by Mr Kumar which purports to comply with that order.
18. A similar point is made in relation to Stratton by reference to an order, made by me on 12 July of this year in proceedings commenced in the name of Eurohome UK Mortgages against various Intertrust entities, including Intertrust Directors 1, Intertrust Directors 2 and Ms Whitaker, and in a claim purportedly brought in the name of Stratton Mortgage Funding 2019-1 Plc, again, against Intertrust Directors 1, 2 and Ms Whitaker. In that order too there was a provision requiring that if any further proceedings were commenced in the name of any of the individuals or entities identified in the schedule against any of the individuals or entities identified in the second column of the schedule, then identification evidence in the terms as set out in the earlier order I quoted from were to be produced. The list of claimants and applicants in that schedule included as a potential claimant Keycards Holdings Incorporated, and again having to identify as a defendant or respondent Intertrust Directors 1, 2 or Ms Whitaker. In those circumstances I am satisfied that those orders have been broken because no evidence has been produced dealing with Mr Kumar's identity as that order required.
19. The final order that I need to refer to is an extended civil restraint order made by me in in the Eurohome and Stratton cases. This order was addressed to Mr Kumar on the basis that he was the individual responsible for commencement of both sets of proceedings with which I was concerned on that occasion. That order said in relation to Mr Kumar the following:

"It is ordered that you [that is to say Mr Kumar] be restrained from issuing any claim or making any application in any court specified below concerning any matter involving or relating to or touching upon or leading to the proceedings in which this order is made without first obtaining the permission of ... HHJ Pelling QC or Mr Justice Foxton in either the High Court or any County Court."

20. That order was expressed to continue in force until 8 July 2025. It will be readily apparent that these proceedings that I am concerned with now have been commenced nominally at least by Mr Kumar, since he is the signatory of the claim forms upon which reliance is placed.
21. It is now necessary to consider the claim on its merits. The claim form, as I have said, contains claims made by four claimants against seven defendants, including the Intertrust directors, Ms Whitaker and Intertrust Directors 1 and 2. I have quoted already from paragraph 1 which sets out the various ways in which the claims have been made. The first point that arises on the substance is that a claim is made by "all the claimants" against "all the defendants", based on an unlawful means conspiracy or causing loss by unlawful means. So far as that claim is brought by the first and second defendants, it is brought without authority, for the reasons I have given, and therefore that claim to that extent is bound to fail.
22. The second basis on which the claim is made is a claim by the first and second claimants against the fifth to seventh defendants for breach of fiduciary duties. So far as that is concerned that claim is bound to fail because the claim has been commenced by the first and second claimants without authority for the reasons I have explained and therefore that claim too must be struck out.
23. The third and fourth claimants have brought or purported to bring a claim under sections 423 and 424 of the Insolvency Act against all the defendants:

"... for causing or purporting to cause the issuers to enter into one or more transactions defrauding creditors."

The insuperable difficulty about that is that there is no evidence of any transaction having been entered into at all, much less one which could have had the effects contended for. In those circumstances, again it is submitted that there is no basis on which the claims under sections 423 and 424 can sensibly be brought. I agree.

24. It is necessary then and in those circumstances to take a step backwards and to look at this very much in the round.
25. These are claims which have been brought, so far as the first and second claimants are concerned, without any authority at all. They are claims in general which have been brought, not merely by

reference to the activities of the first and second claimants, for which there is no authority as I have explained, but are claims for damages for breach of fiduciary duties by entities which have not authorised the commencement of the proceedings and for claims under section 423 and 424 of the Insolvency Act without identifying any transaction which could possibly come within the scope of those provisions. The claims have been brought in breach of the various orders in the way I have described.

26. This is regrettably yet another in a long line of cases which have been brought before the courts in which entities apparently controlled ultimately by Mr Rizwan Hussain have been used to bring claims which have no legal or factual merit and are not demonstrated in evidence filed in answer to it to have any such merit.
27. In those circumstances and for those reasons I consider that, applying the test I identified at the outset of this judgment, it is appropriate that these claims should be struck out.