Neutral Citation Number: [2024] EWHC 99 (Comm)

Case No: CL-2021-000428

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 24/01/2024

Before :

CHRISTOPHER HANCOCK KC

- -

Between :

STEPHEN JOSEPH REDMOND

Claimant

- and -

DECLAN PATRICK O'HARA

Defendant

- -
- -

John Davis (instructed by **Davis Law LLP**) for the Claimant
Oriel Hinds (instructed by **the Defendant**) for the **Defendant**

Hearing dates: 8 December 2023

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Approved Judgment

This judgment was handed down remotely at 16:00PM on Wednesday 24th January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives
(see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

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CHRISTOPHER HANCOCK KC

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Introduction

1. This is an application by the Defendant to set aside a default judgment entered on 22nd September 2021 for the judgment sum of £221,968.48 together with interest and costs.

2. Following this judgment, the Claimant sought a Charging Order and subsequent Order for Sale of a property registered in the Defendant's name, which was in due course made.

3. No sale of the property has however taken place as yet, as I understand the position.

The procedural history of the matter.

4. I have found some difficulty in piecing together the full chronology of this matter, not least because many of the documents produced at the time of the hearing were illegible and were provided in a more legible form after the hearing, and because no full account was given by either party in a skeleton or other document. However, doing the best that I can, I understand the position to be as follows:

    a. On the papers that I have seen, the story seems to start in 2020. A Mr Ballantyne sent an email on 4 November 2020 to Mr Charnley, at "clglaw.co.uk" an email stating that he had received an email from the Claimant saying "Don't make threats to me Colin". Mr Ballantyne then sent a further email to Mr Redmond, copied to Mr Charnley and the Defendant, in which Mr Ballantyne denied owing either Mr Redmond or the Defendant any money, stated that the Defendant was, as the Claimant knew, in Ireland, with no fixed date for return (this being during the pandemic), and stating that this was "extortion".

    b. A letter before action with two spreadsheets of monies allegedly owing was sent on 20 April 2021 to the Defendant at the Rathcoole Avenue address I mention below. The first spreadsheet set out various amounts, with dates running from April 2014 to December 2014. The total of these amounts was £125,727.48. The second spreadsheet is, in my judgment, impossible to understand. It is not clear which of the sums set out in that spreadsheet are said to be owed to the Claimant by the Defendant or on what basis.

    c. Mr Ford of the Claimant then states that the Defendant wrote back indicating that his solicitor would be in touch and identifying that solicitor. I was not shown a copy of this letter.

    d. However, I was shown was an email dated 12 May 2021 sent by the Defendant to Davis Law, indicating that the solicitors should obtain full instructions from the Claimant. This would appear to indicate that the Defendant was anticipating that there might be a claim against him. The Defendant also indicated that he would be counterclaiming.

    e. The claim, which was for repayment of monies loaned by the Claimant to the Defendant, was issued on 28 June 2021. The Particulars of Claim stated that there was an oral agreement between the Claimant and Defendant, although no

details as to precisely when and where the agreement was made were given. It was said that payments had been made until 2019 but had then ceased. Full particulars of the loans and projects for which they were made would, it was said, be provided on disclosure.

f. As I have noted, the claim was preceded by correspondence in which details of the debt and how it was made up were given. It was said to have been served by first class post on the Defendant at Flat 7, Wren Court, 1, Magadelene Gardens, London N20 0AF and, in addition, at 67 Rathcoole Avenue, London N8 9LY. I was shown a copy of the office copy entry for the latter property which shows the Defendant as the registered proprietor. It is the Defendant's case that he was not living at either address at the time. It is his case that his estranged wife was living at one of the addresses, but he was not living at either. Instead, his evidence is that he was living in Ireland at the time. There is some corroboration of that statement in the form of a doctor's note, showing that he was receiving prescription anti-depressants from a surgery in County Galway, which he had been prescribed since April 2020. This was, of course, during the Covid pandemic. In addition, as I have already noted, in Mr Ballantyne's email of 10 November 2020, it is said that, to the Claimant's knowledge, the Defendant was in Ireland, and it was not known when he would return.

g. No acknowledgement of service was filed, and accordingly the Claimant applied for judgment in default of acknowledgement of service on 9 September 2021. An order granting such judgment was made on 22 September 2021. On 23 September 2021 an application was made for an interim charging order.

h. Mr Ford, in his witness statement, says that prior to obtaining judgment, the Defendant had said that he had said submitted court papers. Again, I do not think that I was shown a copy of this document.

i. I was then shown an email from the Defendant dated 25 September 2021, in which he called on the Claimant to stop sending documents to addresses that the Defendant did not live at, but his wife did. In that email, the Defendant says that he had signed and responded to Court, but I have seen no such document. I was also shown a second document dated 28 September 2021 which was from the Defendant's wife, stating that documents should not be sent to her address, since her husband had not lived there for some years. She also stated that she had lived in fear of the IRA for reasons which are said to be connected to this case.

j. Both of these documents suggest that by this time the Defendant was aware of the existence of the claim form, but by this time, the default judgment had been entered.

k. The interim charging order was granted on 26 October 2021. I do not know whether the Defendant was present at that hearing, but have seen no evidence to suggest that he was.

l. What then happened is unclear on the documents. Some of the documents suggest that the charging order was made in April 2022, whilst other documents indicate that there was a hearing in May 2022 in Barnet County Court. On the

basis of what I have seen, and what I was told by Counsel, it seems more likely that there was a hearing related to the potential sale of the house in May 2022 at Barnet County Court before Judge Evans, who indicated to the Defendant (who I was told attended remotely) that he should apply to the High Court.

m. It would appear from Court documentation (emails from Court staff) that an application was made by the Defendant in May 2022 which was not made on notice to the Claimant and which was simply made by email to the Court. The Court staff responded to say that notice of the application had to be given to the Claimant and which also noted that the application did not contain any detail in relation to why the application should succeed.

n. The Defendant's evidence is that the email from the Court was then sent to the Claimant.

o. However, a further hearing appears to have taken place in Barnet County Court, before Judge Dorman. Prior to that hearing, it would appear that Davis and Co, for the Claimant, produced a case summary, with which the Defendant took issue in an email dated 16 November 2022.

p. The hearing in Barnet County Court took place on 21 November 2022, and, as I understand it, an order for sale of the house was made, but with a direction that the Defendant should be entitled to remain there until January 2023.

q. The Defendant then did issue an application notice to set aside the default judgment on November 30 2022, which I was shown. I was shown various documentation produced in support of that application. In summary:

    i. The Defendant indicated that he was vulnerable because the Claimant had made threats against him and his wife.

    ii. The Defendant indicated that the Claimant had been involved with the IRA, and that he, the Defendant, had various claims against the Claimant arising out of misconduct on the part of the Claimant over time. Those claims were said to be very substantial.

    iii. The Defendant produced an email from Mr Ballantyne dated 13 November 2022 stating that Mr Ballantyne had paid £253,000 on behalf of the Defendant to the Claimant, and a further £500,000 in relation to "Rock Projects".

    iv. The Defendant also set out his version of what the true position was in relation to the various matters set out in the claim, by reference, it would appear, to the spreadsheets which I have mentioned above.

r. The application made on 30 November 2022 was heard by Foxton J on 20 December 2022, who ordered a hearing of the matter, but also ordered that the Defendant explain, in particular, the delay in making application to set aside the default judgment. That delay was either until May 2022 or November 2022, depending on which of the two applications I have noted above was to set aside.

s. On 10 January 2023, the Defendant applied to vary Foxton J's order so as to provide for differing dates for the service of evidence. That variation was granted in the order of Bright J on 28 March 2023. Pursuant to that order, the Defendant was to serve his evidence on 29 March 2023; the Claimant was to serve evidence in reply by 19 April 2023; and the Defendant was to serve any further evidence by 10 May 2023.

t. On 29 March 2023, the Defendant served his evidence relating to the set aside application and a draft defence.

u. On 22 May 2023, the Claimant served his evidence in response to the set aside application. As will be apparent, this was later than the date set down by the order of Bright J. Mr Hinds, on behalf of the Defendant, submitted that I should ignore this witness statement because it was served out of time and because no application had been made under CPR 3.9 for relief from sanctions. Following the service of Mr Hinds' skeleton, the Claimant made an application for relief from sanctions.

v. This latter evidence consisted of a witness statement from Mr Ford, together with 3 exhibits. The first exhibit was the letter before action together with its spreadsheets. The second exhibit was in relation to an alleged payment of a small amount made by the Defendant without explanation. The third exhibit was an email from Mr Ballantyne in which he stated that he had made a mistake in the email that was relied on by the Defendant and that the payment of £500,000 made in relation to Rock Projects was not made on behalf of the Defendant.

Preliminary matters.

5. First, I have concluded that I should indeed take the witness statement served by the Claimant into account. First, I am not persuaded that there was a sanction attached to the order of Bright J. Secondly, applying the principles laid down in Denton v White [2014 EWCA Civ 906, I have concluded that I should, if necessary, grant such relief. First, I consider that the breach was not a serious one. The witness statement was served only some weeks after the due date and was served well in advance of the hearing. The service did not prejudice the hearing at all. In the light of this conclusion, I do not think it is necessary for me to go on to consider the second and third stages of the analysis in Denton v White.

6. I should also deal briefly with one further matter which was raised before me, as to the role of Laurence Peter Ford within the Claimant's solicitor's offices. Laurence Peter Ford was subject to restrictions on his ability to work win a solicitor's firm under s.43 of the Solicitors Act 1974, having been involved in a £200,000,000 fraud in 2006. However, I was told, and accept, that he works under the supervision of others, here Mr Davis, and I am satisfied that this satisfies the requirements of the SRA.

Principles applicable to this application

7. This application was made pursuant to CPR 13.3(1)(a). That Rule provides as follows:

"**13.3**

> (1) In any other case, the court may set aside or vary a judgment entered under Part 12 if –
>
> (a) the defendant has a real prospect of successfully defending the claim; or
>
> (b) it appears to the court that there is some other good reason why –
>
> (i) the judgment should be set aside or varied; or
>
> (ii) the defendant should be allowed to defend the claim.
>
> (2) In considering whether to set aside or vary a judgment entered under Part 12, the matters to which the court must have regard include whether the person seeking to set aside the judgment made an application to do so promptly.
>
> (Rule 3.1(3) provides that the court may attach conditions when it makes an order)"

8. First, the Claimant drew my attention to the fact that Foxton J, when he dealt with the application, indicated that a proper explanation for the delay in making the application to set aside the default judgment should be given. I propose to deal first, therefore, with the position in relation to delay.

Delay.

The Claimant's contentions.

9. The Defendant contended that he had not received the original claim form or the application for a default judgment, or the default judgment itself, since those documents were served on his wife's address. The Claimant contended that the Letter Before Action was sent to both of the addresses that I have noted above.

10. As regards his reliance on the fact he was on medication, the Claimant points out that whilst on the same medication, he was able to instruct ASW Solicitors in March 2023 but just before the last hearing withdrew those instructions and instructed Direct Access Counsel Mr Oriel Hinds (who appeared before me).

The Defendant's contentions.

11. Mr Hinds, for the Defendant, submitted as follows:

    a. Foxton J's order required the Defendant to deal with the delay in making his application to set aside and that is dealt with in the Defendant's witness statement. The Defendant was abroad when the Claim Form and Particulars of Claim were served at his former address. Once he came to know of the Claim the matter had already moved on to an application for the sale of the Defendant's former home ("the property"), where his estranged wife resided.

b. There is clear evidence that the Defendant engaged with the Court and the Claimant once he came to know of these proceedings as he was a party to the proceedings at Barnet County Court regarding a sale of the property. It should be noted that the Defendant was at the time suffering with depression and other ailments. Despite this, the Defendant appeared remotely at those hearings and having been prompted by the court to make an application to this court to challenge the judgment, the Defendant wrote to this court in May 2022.

c. The court informed the Defendant that he had to make a formal application to set aside and not simply do so by correspondence. There followed the Defendant's hand-written N244 dated 22/11/2022 with a number of attachments which set out the main reasoning behind the Defendant's desire to have the judgment set aside.

d. It was therefore submitted that the Defendant, not being very well versed in civil litigation, made significant efforts to challenge the judgment within a reasonable time of coming to know about the judgment. The Defendant's initial responses were to try and protect the property from being sold and that eventually led to his applications to this court.

Conclusions on delay.

12. I have concluded, on the evidence, that neither the letter before action nor the claim form came to the notice of the Defendant when served, since he was not occupying either address but was in fact in Ireland. The evidence, and in particular the email from Mr Ballantyne to which I have made reference above, suggest that the Claimant knew this.

13. That is not however the end of the matter. It seems to me probable that he came to learn of the documents in September 2021, as appears to be the case from the emails that I have referred to above. Certainly, in my judgment, the application for the charging order must have come to his notice before May 2022, since it would appear, on the evidence, that he appeared, remotely, at the hearing before Judge Evans in that month.

14. Thereafter, he attempted to make an application by email to the Court, only to be told that he needed to serve that application on the Claimant. He says that he did give notice of his appeal to the Claimant; it would appear that the Claimant denies this.

15. This in turn led to the application before Judge Dorman, at which the order for sale was apparently made, which was followed by the application made by the Defendant in November 2022.

16. In my judgment, the Defendant should have applied formally earlier than he did to set aside the default judgment. Notwithstanding this fact, in relation to a case which is, in my view, both opaque and on its face not free from ambiguity, and in circumstances in which the Defendant has not been legally represented for much of the time, I am not prepared to dismiss the Defendant's application simply on the basis of delay. In my judgment, the more important question is whether the Defendant can show that he has a defence with a real prospect of success.

Does the Defence have a real prospect of success?

The suggested Defences.

17. I start with the various defences which the Defendant puts forward in his pleaded defence. They are threefold, and are as follows:

    a. The first is that there has been a failure to comply with the requirements of the CPR in relation to the manner in which interest has been pleaded.

    b. The second is that the Defendant has various counterclaims, running into millions of pounds, and involving very serious allegations against the Claimant.

    c. The third is that the Defendant has repaid the monies allegedly loaned to him.

The Claimant's contentions.

18. As to the claim relating to the pleading of interest, issue is taken as to the requirements of CPR16.4(1) and (2) and the sub-numbers. It is respectfully submitted that these criticisms are unfounded and unsustainable. The process in respect of the pleadings required throughout judicial oversight. The Court is therefore asked to reject these submissions.

19. As to the alleged counterclaims, the Claimant argues that the Defendant produces no evidence to support his Defence, other than to make allegations concerning the IRA and in paragraph 12 takes issue with the contents of the Particulars of Claim. The Defendant gives no credible explanation for or evidence of a counterclaim. It is submitted that attempts to seek to set aside the Judgement and Charging Orders are simply designed to delay the consequences of the Judgements, of which he is fully aware.

20. Finally, the Claimant notes that the Defendant further suggests that he has repaid certain monies to the Claimant and appears to rely on an unsworn copy email from a Mr Ballantyne. The Claimant itself relies on the further email from Mr Ballantyne annexed to the witness statement of Mr Ford to which I have made reference.

The Defendant's contentions.

21. There has been put before the Court a draft Defence which sets out the Defendant's challenge to the subject matter of the judgment. Essentially, the Defendant says he does not owe the money being claimed against him and secondly, that the Claimant has received in excess of £750,000 on the Defendant's behalf and that sum far outstrips any sum alleged in the Claim Form.

22. Those assertions are supported in part by an email from Colin Ballantyne that clearly states that he had transferred the money to the Claimant. Whist this assertion is challenged by the Claimant's witness statement from Laurence Peter Ford all that challenge does is raise a question about which email from Colin Ballantyne can be relied upon. What the email relied upon by the Claimant does not do is challenge the assertion that there was a payment of more than £250,000 made to the Claimant on behalf of the Defendant.

23. In the circumstances, it is submitted that the Defendant has a real prospect of successfully defending the Claim and should be given that opportunity by having the default judgment set aside.

Conclusion on real prospect of success.

24. I will deal with the three grounds put forward by the Defendant in turn.

    a. I do not consider there to be any substance to the defence based on the alleged failure to comply properly with the requirements of CPR in relation to the pleading of interest. I reject this supposed defence.

    b. In relation to the substantial counterclaims that it is said the Defendant possesses against the Claimant, these have not been pleaded and have not been verified by a statement of truth. Particularly in circumstances in which the nature of the allegations which have been outlined in witness statements and documents are so far reaching, I do not consider that I can properly take these into account absent a proper pleading, settled by Counsel or solicitors and verified by a statement of truth. It remains open, of course, to the Defendant to plead such a claim, or to bring a fresh claim against the Claimant, but I do not think it would be right to allow wholly unparticularised assertions to be relied on by way of defence to the current claim.

    c. This leaves the question of whether the Defendant, or another party on his behalf, has repaid the monies to the Claimant. I have been shown two emails sent by a Mr Ballantyne in relation to monies paid by him to the Claimant. The Defendant relies on an email saying that a sum of £253,000 has been paid on his behalf to the Claimant, along with £500,000 relating to an entity called Rock Projects. The Claimant, in turn, relied on an email from Mr Ballantyne indicating that a mistake had been made in relation to the payment of £500,000 relating to Rock Projects. The latter email made no reference to the sum of £253,000.

25. In these circumstances, I have concluded that the Defendant has established a defence with a real prospect of success.

26. However, I have also concluded that this defence is "shadowy" and that it would be appropriate to impose conditions on the grant of leave to defend, pursuant to CPR Part 3. The condition I impose is that the charging order will remain in place pending the trial of this matter.

Some other good reason for trial?

27. Finally, the Defendant submitted that there was some other good reason why the court should set the judgment aside and require a trial. The Defendant relied on the attachments put before the Court when he made the putative applications in May and November/December 2022. Those attachments (which were sent to me at my request in a more legible form following the hearing) were said to describe an operating method used by the Claimant to 'extort' monies from various persons by threatening to invoke retribution from the IRA. Whether there is substance to these allegations, it was said,

will very much depend on whether or not the persons named by the Defendant (or referred to by him) are prepared or able to give testimony at any subsequent trial.

28. It will be apparent from what I have already said that I am not prepared to take these allegations into account, given the fact that they have not been properly pleaded or particularised at the present time. Accordingly, I do not regard these allegations as leading to the conclusion that there is a good reason for trial, and therefore a good reason to set aside the default judgment.