



Neutral Citation Number: [2022] EWCA Civ 1172

Case No: CA-2022-001009

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT
HHJ Pelling QC
[2022] EWHC 1019 (Comm)

Royal Courts of Justice,
Strand, London, WC2A 2LL

Date: 18th August 2022

Before:

Lord Justice Males

Between:

(1) Eurosail-UK 2007-4BL PLC **Claimants**
(2) Eurosail-UK 2007-3BL PLC
(3) Eurosail-UK 2007-2NP PLC
(4) Eurosail 2006-4NP PLC

(5) Keycards Holdings Inc **Applicant**

- and -

(1) Wilmington Trust SP Services (London) **Defendants/**
Limited **Respondents**
(2) Daniel Jonathan Wynne

The Applicant was not present or represented
Richard Mott (instructed by **Alston & Bird (City) LLP**) for the **Respondents**

Hearing date: **18th August 2022**

Judgment Approved

Lord Justice Males:

1. This is an application by Keycards Holdings Inc, a Marshall Islands company which has been annulled, but which may nevertheless have some continuing existence for a period of three years following the annulment. The application requests reconsideration of an order which I made on 25th July 2022. That order provided that Keycards must file and serve on the respondents' solicitors an unredacted copy of the passport and driving licence of Mr Paul Anthony, failing which its application for permission to appeal would be struck out.
2. The background to that order appears from the judgment and order made by His Honour Judge Pelling QC in the court below ([2022] EWHC 1019 (Comm)). In outline, the judge struck out a claim brought in the name of the first to fourth claimants, each of which is a company with the word "Eurosail" in its name, against Wilmington Trust SP Services (London) Limited and Mr Daniel Wynne, a director of Wilmington. Keycards is the fifth claimant.
3. The claim made is that on 9th September 2021 Keycards, together with a company called United Technology Holdings Limited and an individual called Paul Anthony, served a notice on the Eurosail companies, to which they had previously been strangers, constituting themselves as *de facto* or shadow directors of those companies. These so-called shadow directors then set about taking a series of steps which are alleged to have resulted, in summary, in the forfeiture of shares held by the Eurosail companies, the sale of those shares to a new shareholder associated with the so-called shadow directors, the removal of the existing directors who had been appointed under the company's articles of association and the appointment of the so-called shadow directors as *de jure* directors in their place. The result, according to the claim, is that the assets held by the Eurosail companies have been transferred to a new entity under the control of the shadow directors or those associated with them.
4. The judge was not greatly impressed by this claim. He described it as "legally absurd". In this, he had the backing of other judges who had dealt with similar claims made by the same set of so-called shadow directors and others associated with them in other cases. See, for example, the decision of Mr Justice Miles in *BMF Assets No 1 Limited v Sanne Group Plc* [2021] EWHC 3306 (Ch). Mr Justice Miles said this:

"49. The concept of a *de facto* director is one that is used in law for a person who actually acts as a director and participates at the relevant level in the governing structure of a company. It is a label used when seeking to establish liability against such a person, notwithstanding that that person has not, strictly speaking and formally, been appointed as a director. Although some of the case law talks of persons assuming the position of a director, that is only part of a multifactorial test which requires the court to look at what has actually happened, whether that person has been allowed access to information, whether he or she has been allowed to take part in meetings or decision making in relation to the company, how that person has been presented by the company, and so forth. The aim

is to determine whether in substance and reality the person is to be regarded as a director.

50. What is entirely clear is that people cannot make themselves directors of a company simply by saying that they are prepared to assume that position. It is legally nonsensical to think that a stranger to a company could by their own unilateral act of saying they are prepared to assume the position become a director of a company. It would mean that anyone could become a director of any company simply by saying so, regardless of the constitutional, regulatory and corporate governance requirements. That is legally absurd. What it seems to me has happened here is that the four *de facto* directors, as they call themselves, are acting so to speak [as] corporate cuckoos, trying to push themselves into the Issuers and Holdings and forcing out the true directors. There is no basis in law for that to take place."

5. Judge Pelling described the present case as the latest in a long line of similar spurious claims:

"1. This is an application by the defendants to these proceedings for an order striking out a claim brought in the name of the first to fourth claimants against Wilmington Trust SP Services (London) Limited ('Wilmington') and Mr Wynne, a director of Wilmington. This is the latest in a long line of spurious claims, which have as their central common denominator the involvement of Mr Hussain whose *modus operandi* in relation to the issues covered by these cases is fundamentally similar. Similar points have come before the courts on multiple different occasions: in the Commercial Court before me, in the Circuit Commercial Court and in the Chancery Division. They have become not merely a major waste of time and money for those who have to respond to these spurious claims, but a significant waste of public resources and a real source of delay for other litigants with real cases to resolve."

6. It appears that Mr Hussain has served time in prison for contempt of court, but was subsequently released. Since then, he has once again been committed to prison for contempt in relation to other vexatious proceedings, but apparently has not yet been apprehended and remains at large.
7. In addition to striking out the claim and granting an injunction to prohibit similar conduct in the future, the judge's order directed that if any further application was issued in the present proceedings by or in the name of Keycards or Paul Anthony among others against the Eurosail companies or the respondents, the individual signing the application notice was to file and serve a witness statement exhibiting a copy of their passport. The reason for that order was that there are strong reasons to believe that "Paul Anthony" was a fictitious identity and that no such individual existed.

8. "Paul Anthony" appears to be a regular alias of Mr Hussain. In another case, *Clavis Securities Plc v Intertrust Management Limited* [2021] EWHC 3737 (Comm), "Paul Anthony" served evidence in support of alleged entities which Judge Pelling concluded were controlled by Mr Hussain.
9. In the present case, the only evidence served of the existence of "Paul Anthony" strongly suggests that this is a fictional identity. The respondents first sought evidence of the identity of "Paul Anthony" by letter dated 15th December 2021. That letter was ignored. Shortly before the hearing at first instance, however, a witness statement was served, purportedly by an individual called Paul Anthony, which attached a scanned copy of a heavily redacted driving licence. However, the document as served is consistent only with someone whose first and middle names are Paul and Anthony, but who has chosen to conceal their surname. The format of a UK driving licence, as this purports to be, places the surname of the holder in the top line, directly above the line detailing the title, first and middle names of the holder of the licence. Thus, if this is a genuine document, it is most unlikely to belong to somebody with the surname Anthony, as that is the individual's middle name. It is perfectly clear that the surname of the holder of this document has been deliberately concealed.
10. These points were made in the skeleton argument served by the respondents for the hearing before Judge Pelling, but no explanation has been provided and no response to these points has been made.
11. Nor has any other documentary evidence been adduced to show the existence of Paul Anthony or his involvement in the affairs of Keycards, although if he is a genuine individual holding the positions which he has claimed to hold, such documents must exist. Their absence is therefore very telling.
12. Despite the strong terms in which the judge struck out the claim, Keycards has sought or has purported to seek permission to appeal. The appellant's notice and the skeleton argument in support are both signed or purport to be signed by Paul Anthony. No passport or other evidence of that individual's existence has been provided.
13. It is suggested, in a letter apparently from Keycards which is signed by an individual called Artemakis Artemiou, that Mr Anthony is domiciled and ordinarily resident outside the jurisdiction and is no longer an officer or director of Keycards. That is a surprising assertion, as Keycards has relied on his witness statement, made as recently as 25th April 2022, in which he asserts that he has an address in London and is a director of Keycards. The discrepancy has not been explained.
14. In fact, the address in London is an address in Bishopsgate, which is the address given by Keycards in the claim form as being the address for service of documents on it for the purpose of this litigation. However, I have been shown uncontradicted evidence that whenever an attempt has been made to serve documents on Keycards at that address, service has been rejected on the basis that Keycards has no presence there and the reception desk would not therefore accept delivery of the documents.
15. Mr Artemakis Artemiou, who has asserted that Mr Anthony is domiciled and resident outside the jurisdiction and is no longer an officer or director of Keycards, is the same individual who acted for the claimants in the case of *BMF Assets No 1 Limited v Sanne*

Group Plc, which I have already mentioned. As appears from paragraph 18 of the judgment in that case, he sometimes uses the forename Andreou rather than Artemakis, but it is in either case the same individual. It appears that he first came into contact with Mr Hussain in the prison to which Mr Hussain was committed for contempt.

16. It was in those circumstances that, on the respondents' application, I made the order to which I have referred. I ordered, in addition, that permission would not be given for Keycards to be represented by Mr Anthony and that if it wished to pursue its application for permission to appeal, Keycards would have to instruct solicitors or be represented by an identified director who must provide an address for service of documents together with evidence of his or her appointment as a director and authority to represent Keycards. Mr Artemiou, despite having written to the court seeking reconsideration of my order, has not provided any such evidence.
17. By a letter dated 29 July 2022, signed by Mr Artemiou, Keycards requested reconsideration of my decision, stating that compliance was impossible because it did not have an unredacted copy of Mr Anthony's passport and driving licence and so was unable to comply with the order. Further, as Mr Anthony was domiciled and ordinarily resident out of the jurisdiction and was no longer an officer or director of Keycards, it was unable to compel him to provide these documents. Once again, there was no explanation of how it came to be that Mr Anthony had ceased to be an officer or director of Keycards or why he had served a witness statement giving an address in London. I would add that the heavily redacted driving licence purports to be a UK driving licence although the address of the holder has been redacted.
18. In the event, nobody has appeared to represent Keycards at this hearing. In a letter of yesterday's date, signed by Mr Artemiou, Keycards asserts that its efforts to see whether any of its officers could be present at today's hearing have been to no avail. The letter did not ask for an adjournment of this hearing, and invited the court to rely on the written contents of the request for reconsideration. It confirmed that Keycards had had an opportunity to review the contents of the respondents' skeleton argument, prepared by their counsel, Mr Richard Mott, who has appeared today, but apart from describing these as "vapid but specious ... untrammelled, tendentious and in parts purporting to peddle misconceived and misguided proclamations ...", did not engage with the substance of the respondents' submissions.
19. It is notable, however, that this letter does not identify the individuals who are alleged to be the officers of Keycards, nor does it go into any detail about their location or availability. Likewise, there is no explanation why Keycards has not instructed solicitors and counsel to represent it on this application. It does not say either that it has been unable to instruct lawyers or that it would wish to do so.
20. In all the circumstances, I am entirely satisfied that "Paul Anthony" is a fictitious identity and that no such person exists. That is not to say, of course, that there may not be many individuals in the world with that name, but what I mean is that the purported signatory to the appellant's notice, and to many of the other documents in these proceedings, is a fictitious person. The evidence to that effect is strong, and there has been no serious attempt to rebut it. Such evidence as has been served in the form of the heavily redacted

driving licence only serves to confirm that the identity of the signatory to the appellant's notice is fictitious.

21. It is submitted by Mr Artemiou in the correspondence to which I have referred that he is an officer of Keycards and is willing to provide a copy of his passport to the court and that he should be allowed, in effect, to replace "Paul Anthony". That suggestion, however, does not meet the point that Keycards has served an appellant's notice as well, as other documents in these proceedings, and indeed the notices which gave rise to these proceedings, purportedly signed by an individual who does not exist.
22. Moreover, it fails to engage with the fact that, in contempt proceedings against Mr Hussain, Mr Justice Miles found to the criminal standard of proof that steps purportedly taken by Mr Artemiou were in fact taken by Mr Hussain, who was the real author of documents purportedly written by Mr Artemiou and that Mr Artemiou would not have been capable of writing them himself. See *Business Mortgage Finance 4 Plc v Hussain* [2022] EWHC 449 (Ch) at paragraph 310 where, after identifying ten features of the case, Mr Justice Miles said this:

"Taking these features cumulatively and considering the broader canvas, I consider that there is an overwhelming case (to the criminal standard) that Mr Hussain was directly involved in each and all of the steps taken in the name of Mr Artemiou or Kipling and the other steps complained of by the claimants on and after 30 March 2021 (though only those occurring after 7 April 2021 are capable of constituting contempt of court for reasons already given)."
23. It is entirely clear that this is vexatious and abusive litigation, and that Judge Pelling was right to say what he said about it in the passage which I have quoted. In those circumstances, the application for permission to appeal is struck out, and is certified as totally without merit.
24. Indeed, in the course of preparing for this hearing I have had the opportunity to consider in greater detail the application for permission to appeal, including the skeleton argument served in support of it. Even if the appellant's notice had been signed by a genuine individual with authority to sign it on behalf of Keycards, I would unhesitatingly have struck out this application. Judge Pelling was fully justified in describing the claim as legally absurd, for the reasons given clearly and accurately by Mr Justice Miles in *BMF Assets No 1 Limited v Sanne Group Plc*. Time and money should not be wasted on these spurious and abusive claims.