Neutral Citation Number: [2021] EWHC 686 (Ch)

Royal Courts of Justice,

Rolls Building, Fetter Lane,
London EC4A 1NL
Date 19 March 2021

IN THE HIGH COURT OF JUSTICE **Claim No. BL 2020-000666**
BUSINESS AND PROPERTY COURT OF ENGLAND AND WALES
CHANCERY DIVISION
BUSINESS LIST

Date 19 March 2021

Before

Peter Knox Q.C.

(sitting as Deputy Judge of the High Court)

Between

(1) MS ITWE SUSAN UGOLOR
(2) MR UDU UGOLOR
(3) MS BARBARA UGOLOR

Claimants

And

MR GLENROY ESEH UGOLOR

Defendant

MR MARK BLACKETT-ORD (instructed by Mitchells) for the Claimants

MR MARTIN YOUNG (acting pursuant to the Chancery Litigants in Person scheme) for the Defendant

Hearing date: 18 March 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge orally at 2.10 pm on Friday 19 March 2021. This written version of the judgment takes into account subsequent editorial corrections.

1. I have before me an application by the Defendant, Mr Glenroy Eseh Ugulor, to allow him to remortgage the property known as 41 St Donatts Road, London SE 14 6NU in Catford, London with a different lender from the one who currently has a mortgage over it. He wishes to do this pursuant to a remortgage offer in principle made on 16 March 2021, that is to say, just three days ago. The property is part of his late mother's estate, and he claims that, pursuant to a will made on 23 March 2008, he became her executor upon her death on 21 March 2020, and further, that he has now obtained probate of this will by a grant made on 12 December 2020. Under this will he stands to inherit the bulk of his mother's estate, including the St Donatts Road property.

2. However, the Defendant accepts that he needs permission for the proposed remortgage, because the Claimants dispute the validity of the will on which he relies, and further, he is subject to an undertaking he gave to Mrs Justice Falk in an order made on 19 May 2020 not *"to attempt to or actually diminish the value"* this property, by, amongst other things *"raising or attempting to raise money on it"*. But he says this undertaking should be varied to enable him to do this, and to do so urgently, because the current lender is threatening to sell the property at auction on 31 March 2021 by reason of arrears that have accrued on that mortgage. This, he says, would be contrary to the estate's interests, because such a forced sale is likely to be at a discount of about 30% to the price the property would fetch on an orderly sale.

3. The Claimants, who are his two sisters and his brother, oppose this application. As I have said, they dispute the validity of the will: their contention is that their mother died intestate, which would mean that her estate falls to be divided between each of the three of them and the Defendant equally: in other words, a four way split, rather than the bulk of it going to the Defendant. Further, they contend, by cross-application, that whether or not the will is valid, the Defendant is not a fit and proper person to be administering the estate, and that instead it should be administered by an administrator pending suit until determination of the will's validity. That person, they say, should be a Mr Stephen Laycock, who is a solicitor and consultant in the firm of solicitors representing them in these proceedings.

4. Further, the Claimants say that under the proposed replacement mortgage, title would have to be vested in the Defendant alone as if the property had already been validly assented to him under the disputed will, which would be inappropriate as it has not been so assented; and anyway, there is no proper evidence that the proposed

replacement mortgagee, if it knew the history of this matter, would be prepared to grant to the Defendant a remortgage in place of the current mortgage.

5. They add that there are reasonable grounds, if such are needed, for believing that their proposed administrator pending suit would be better placed to prevent the proposed sale at auction, not only because he would be a more reassuring party to deal with for the current mortgagee or any potential replacement, but also because there are grounds for believing that the current mortgage was obtained by undue influence exerted over the deceased by the Defendant, of which, it is said, the current mortgagee was on actual or constructive notice. There is a real prospect, therefore, that the threat of such proceedings, and if need be an application for an interim injunction, by the administrator pending suit, would prevent a sale at auction on 31 March 2021.

6. The Claimants also apply for various other orders in their cross-application, based (a) on the Defendant's admitted non-compliance with Mrs Justice Falk's order for the provision of certain information and an affidavit of verification, (b) his failure to acknowledge service or to enter a defence, and (c) his alleged wrongdoings which led to the imposition of her order (and previous orders), and also, it is said, in obtaining the grant of probate.

7. There are therefore two main issues I have to consider.
   (1) First, should I allow the Defendant to attempt to remortgage the property under the remortgage offer of 16 March 2021 in his own name, whether by giving him an indefinite period of time to do so, or at least by giving him a few days from now up to a date expiring at some point before the threatened auction on 31 March 2021; or should I appoint Mr Laycock as administrator pending suit forthwith, and allow him to deal with the matter as he sees appropriate, including by threatening or bringing proceedings against the current mortgagees?
   (2) Second and in any event, what other orders should I make in the light of (a) the Defendant's admitted non-compliance with Mrs Justice Falk's order, (b) his failure to acknowledge service or to put in a defence, and (c) his alleged wrongdoings which led to her order being made, and to the grant to him of probate?

8. Before I turn to these issues, I shall turn first to the facts.

The facts

Events before the deceased's death.

9. The parents of the three Claimants and the Defendant were Mr Magnus Ugolor and the deceased, Pamela Festous. They divorced in 1980, after which the deceased continued to live in the St Donatts Road property along with their children until they grew up. This is a 5 bedroomed house, and at the time of the divorce was a property owned by the local council. However, in 2004, as appears from the proprietorship

register H.M. Land Registry, the deceased acquired the freehold for £192,000. She did so, the Defendant says, with his assistance and under the right to buy scheme.

10. At some point, although it is not clear when, the deceased adopted three other children, who, the Claimants say, were adopted out of the family.

11. In or about 2009, the Defendant on his evidence, moved the deceased out of her home at St Donatts Road to one of his own properties in Catford. According to the Claimants' evidence, she was already showing signs of paranoia, and a few years later, in 2015, the Defendant was taken to court by a neighbour because of her mental instability.

12. The Defendant appears to have got into financial difficulties, and in April 2016, again on the Claimants' evidence, he asked his sister Itoweh to remortgage her property to pay off his debts, but she declined to do so. Shortly afterwards, he was made bankrupt on 17 May 2016. He was discharged from the bankruptcy after one year.

13. While he was still bankrupt, the deceased granted a charge over 41 St Donatts Road to a finance company called Together Commercial Finance Limited ("Together Finance") and gave the proceeds to the Defendant. The charge itself is not in evidence, but it was registered at H.M. Land Registry on 25 January 2017. It would appear that the sum borrowed and paid over to the Defendant was in the region of about £350,000, because according to the proposed refinancing document to which I refer below the debt currently owed to Together Finance as at 16 March 2021, including arrears of about £6,000, is about £385,000. However, there is no evidence about either the term of the Together Finance loan, the interest rate, or the repayment requirements.

14. There is evidence, however, that it was characterised by Together Finance as a "business loan". The Defendant through Mr Young explains this on the basis that the property was being let out to tenants. The Claimants alleged in their original particulars of claim (without contradiction) that the Defendant had been letting it out for "many years", at rents of about £2,000 to £3,000 a month which he kept himself.

15. The Defendant admits in paragraph 24 of his first witness statement in this matter that the deceased took out the loan for his benefit:

> "My mother refinanced the property around late 2016 and 2017 and she did assist me to pay off my debts as I was in financial difficulties … she did this willingly and lovingly".

16. His case is that there is nothing surprising or sinister in this, as he alone of the children looked after his mother in later years.

17. In about February 2017, according to the Claimants, the deceased had a stroke, and they became aware that she had been diagnosed with dementia. Further, according to the Defendant, in 2017 she was moved from his property in Catford to a place of her own in Stratford; and then in 2018 she moved into a specialist care home in Forest Gate because she had become paralysed by her stroke.

18. The deceased died on 21 March 2020.

Events since the deceased's death

19. It is common ground that 41 St Donatts Road fell into the deceased's estate, but there is no evidence as to what other assets she had, or as to her liabilities. The Claimants estimate its value at £1 million; the Defendant at £780,000.

20. The Claimants believed that the deceased had not left a will, and accordingly at some point in or about March or April 2020 the First Claimant, Itoweh Ugolor, applied to place a caveat at the Probate Registry, and it appears that a caveat was then lodged in her favour. This caveat was subsequently renewed on 24 August 2020.

21. The Claimants were also highly suspicious as to how the Defendant had managed to acquire the rents being collected from St Donatts Road, and how he had acquired three other properties, one being the Catford property I have referred to above (in Culverly Road), and the others being at 1A Silverland Street, in Newham, London, and 5 Medina Lodge, Isledon Road, London. They alleged that in fact he must have acquired these latter properties from the use of funds improperly obtained from the deceased over the years.

22. Accordingly, on 4 May 2020, they issued these proceedings, seeking, in essence a declaration that the Defendant held these three properties on constructive trust for the deceased's estate, and therefore, there being no will, they themselves were each entitled to a quarter share thereof under the rules of intestacy, and a quarter share of the St Donatts Road property.

23. Shortly before doing so, they successfully applied on short notice to the Defendant for a freezing order against him, which Mr Justice Birss granted on 30 April 2020. By this order, Mr Justice Birss restrained the Defendant (in short) from dealing with the deceased's estate other than at least 72 hours notice, and from dealing with any assets of his own save to the extent their remaining value was over £1 million. The prohibition expressly covered all the three properties I have mentioned, any other property he owned, St Donatts Road, and any money in his bank accounts.

24. Mr Justice Birss's order also ordered the Defendant to provide information about his assets, bank accounts (including bank statements from 1 January 2016 to date), and

"Any copy of any will of the [deceased]", and to verify this information on affidavit by 11 May 2020.

25. On 12 May 2020, Mr Justice Fancourt continued the freezing order until 19 May 2020, and extended the time for the provision of information to 15 May 2020. No information was provided by either date.

26. However, on 18 May 2020, shortly before the hearing adjourned to 19 May 2020, the Defendant's then counsel served on the Claimants' counsel an unsigned witness statement, which had attached to it a copy of an alleged will by the deceased, said to have been made on 21 March 2008, under which, as I have said earlier, the Defendant himself stood to inherit 41 St Donatts Road and all the deceased's personal estate, subject only to three small legacies totalling £35,000 to non-family members, and a trust fund of £100,000 for her children who the Claimants say had been adopted out of the family. The will appeared to satisfy the formal requirements for a will, and was witnessed by two witnesses.

27. At the hearing on 19 May 2020, Mrs Justice Falk discharged the current proprietary and freezing orders made by Birss J and Fancourt J upon the undertaking by the defendant:

> *"not to attempt to or actually diminish the value of the estate property at 41 St Donatts Road by selling or attempting to sell or by raising or attempting to raise money on it."*

28. The defendant also undertook to put all rents collected from the property into a separate bank account, and to apply the monies only for the purpose of making mortgage payments or other expenditure on the property.

29. Finally, Mrs Justice Falk extended the time for the provision of the information and an affidavit already ordered to 2 June 2020, and adjourned the hearing to 19 November 2020 to allow the parties time to settle the dispute.

30. Despite the further extension of time to 2 June 2020, the Defendant failed to provide any of the required information until 9 June 2020, when according to an email put before the court in oral argument, he sent an email to the Itoweh Ugulor saying: *"In relation to the order these are the documents you requested"*. It is not clear from the bundle what these documents were, but I was told by Mr Young that the pages totalled 45, of which 26 appear in the bundle before me, which consist of the deceased's bank statements, and certain bank statements of an unidentified party, up to the end of 2017, but nothing else. Further, it is clear that no affidavit was served.

31. Further, and in the meantime, the Defendant failed to serve an acknowledgment of service or a defence to the claim. The Claimants, however, did not take any steps to force him to do so.

32. The case did not settle, and so a further adjourned hearing took place on 19 November 2020, at which Mr Justice Roth gave the Claimants permission to amend their claim form and particulars of claim so as to dispute the validity of the will put forward by the defendant.

33. Pursuant to an extension of time granted by Master Clark on 9 December 2020, the Claimants served their amended claim with particulars on 23 December 2020. This sought an order pronouncing against the validity of the will, and a declaration (as before) in relation to the other properties held by the Defendant. It alleged in particular that the deceased did not know or approve of its contents, relying on her alleged lack of testamentary capacity, her alleged volatile and paranoid mental state. It also pleaded undue influence.

34. At the same time as serving the amended claim the Claimant's solicitors asked where the original will was and where it could be inspected.

35. They received no reply, nor did the Defendant file a defence by 12 February 2021 as ordered by Master Clark.

36. Instead, the next they heard from the Defendant was his application dated 25 February 2021, stamped by the court on 2 March 2021, seeking a variation of his undertaking to Mrs Justice Falk, in order to allow him to discharge the Together Finance mortgage so that he could remortgage St Donatts Road with another lender. Still no details were given of the Together Finance mortgage, nor were any given of any proposed replacement. All he said was that the arrears had risen to over £12,000 last year because he could not find tenants because of the Co-vid 19 crisis, but now they were down to £6,000. He also revealed that Together Finance had appointed Law of Property Act receivers over the property on 31 July 2020.

37. As significantly, he also revealed that he had now obtained probate of the deceased's will, which he attached to his application.

38. This application, I am told, had not yet been notified to the Claimants when they themselves made a cross-application of 2 March 2021, in which, as I have said above, they sought the appointment of an administrator pending suit to administer the estate, and various other remedies. This was supported by three witness statements, from Ms Itoweh Ugulor, Mr Chapman (the Claimants' solicitor) and Mr Stephen Laycock, who as I have said was a consultant and partner at the Claimants' solicitors. These said, in essence, that:
    (1) Itoweh Ugulor had never received a notice warning her of the Defendant's application to remove her caveat, so he must have misled the Probate Registry by an affidavit to believe that she had received such notice, when she had not, in order to warn off the caveat and then enable him to obtain probate;

(2) The Defendant, using the probate he had now obtained, had applied to HM Land Registry to vest the freehold title of St Donatts Road in his name pursuant to an alleged assent of the property by himself and to himself.
(3) Mr Laycock would be prepared to act as administrator pending suit.

39. The only other material evidence before me was provided by Mr Young in the course of the hearing, who appeared on the Defendant's behalf pursuant to the Chancery Litigants in Person's scheme, and to whose clear and steady submissions I would like to pay special tribute. This evidence was as follows.
(1) The email I have referred to above of 9 June 2020, under cover of which the Defendant provided some of the ordered information;
(2) An email sent by the Law of Property Act receivers to the Defendant on 26 November 2020 explaining that the St Donatts Road property had to be sold to redeem Together Finance's charge; and
(3) A "Offer in Principle" addressed to the Defendant from MT Finance Limited ("MT Finance") dated 16 March 2021, conditional upon satisfactory searches, and for business purposes, in the net sum of £442,873.92, for a period of 12 months.

The first issue

40. With this summary of the background, I turn to the first issue, namely, whether I should authorise a variation of the Defendant's undertaking to Mrs Justice Falk so as to enable him to enter into the proposed remortgage with MT Finance so that he can now pay off Together Finance.

41. Despite Mr Young's submissions, I have no doubt that it would be inappropriate to make any such order. I say this for the following reasons.

42. First, and as a general point, on the evidence before me it is clear that the Defendant is not an appropriate person to be administering the estate pending resolution of the Claimant's claim. Therefore, he should in my view be replaced on any footing by a more responsible administrator pursuant to the court's jurisdiction under s. 117(1) of the Senior Courts Act 1981, which provides:

> "Where any legal proceedings concerning the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the High Court may grant administration of the estate of the deceased person in question to an administrator pending suit, who shall, subject to subsection (2), have all the rights, duties and powers of a general administrator."

43. In this context, it seems to me that the same principles must apply as they do under s.50 of the Administration of Justice Act 1985, which gives the High Court power to appoint a substitute or to remove a personal representative. That is to say, as put by Chief Master Marsh in paragraph 18 of *Schumacher v. Clarke* [2019] EWHC 1031, the core concern of the court is what is in the best interests of the beneficiaries looking at their interests as a whole; and if there is a good arguable case for removing

a person who claims to act as executor, then the court has a power to do so. So here, in particular given that there is a live dispute as to who the beneficiaries of the deceased's estate should be, I have such a discretion to exercise to see that their best interests are served, whoever they may turn out to be on further investigation.

44. The reasons why I say that the Defendant is an inappropriate person can be summarised as follows:
    (1) By its freezing orders, the Court has already determined that there are grounds for believing that there is a real risk that he would wrongfully dissipate his or the estate's assets.
    (2) There are reasonable grounds for believing that the three properties he owns in his own name were acquired using funds from the deceased, because he has never put in a defence in answer to this allegation either in the original Particulars of Claim or in the amended Particulars of Claim.
    (3) After the death of his father, Magnus Ugulor in 2017, the Defendant put forward a purported will made in September 2002 under which his father left him the entirety of his property. When this was challenged in proceedings by Magnus's widow (i.e. the Defendant's step mother), the Defendant dropped his claim. On the face of it, this would appear to be because the will was obviously a forgery, because the will refers to a property being left by Magnus to the Defendant which he, Magnus, did not even own in September 2002, but of which he was a mere tenant, and which was about to be repossessed from him.
    (4) Despite the extensions of time provided to him and Mrs Justice Falk's order in July 2020, it is clear that he has provided only a fraction of the information he was ordered to provide. Even allowing for the fact that we do not have about 20 pages of what he provided in the bundle, it is inconceivable that those 20 pages could have covered the entirety of the bank statements ordered to be provided from 1 January 2016 to July 2020. Further, he never provided an affidavit and has never explained why he has failed to do so.
    (5) He still has not acknowledged service of the claim.
    (6) There are reasonable grounds for believing that he obtained the warning off of the Claimants' caveat, and therefore probate, by falsely telling the Probate Registry on affidavit that he had served a warning off notice on the Claimants when he in fact he had not.
    (7) In order to obtain this benefit, he used the original of the will (which had to be lodged with the Probate Registry); and thereby took advantage, perhaps consciously, of the fact that he had not lodged it in court in answer to Claimants' claim or amended claim, as he was required to do if he had lodged an acknowledgment of service by CPR rule 57.5(2)(b).
    (8) He has tried to use the grant of probate, without telling the Claimants, to vest St Donatts Road in his own name, and then get H.M. Land Registry to register him as the sole proprietor of the property.
    (9) There is no witness statement from him which explains any of these things, despite, in particular, accusations of wrongful warning off and obtaining of

probate in C's witness statements which were, as I understand it, served on him on or shortly after 2 March 2021.

(10) Finally, it is apparent from the Law of Property Act receivers' correspondence to him of 26 November 2020 and 15 January 2021 that he has failed properly to communicate with them or Together Finance, which has resulted in their losing patience with him.

45. Second, and more specifically, I am not persuaded that the threat of an immediate auction unless the Defendant can remortgage the property with MT Finance is a sufficient reason to allow him, despite all these objections to his suitability, to remain in place as in effect the administrator of the estate, or at least the person with control over the St Donatts Road property either for a short period or indefinitely.

(1) First, the premise of his application is that he should be allowed to create a misleading public record at the land registry – i.e. he is the sole proprietor pursuant to a valid vesting assent after all the deceased's creditors have been paid off, when there is no evidence that this is what has happened at all. I cannot see how it can be appropriate to allow this, or at least to allow this in the face of the Claimants' objection.

(2) MT Finance's offer is just an in principle offer, and there is no evidence that if MT Finance knew the truth, they would grant the remortgage.

(3) Further, even if MT Finance was prepared to grant the remortgage, there is no reason for confidence that the same problems would not arise in future with the Defendant in control.

(4) MT Finance's offer is not particularly advantageous to the estate: it involves payment of broker's and legal fees of about £15,000 and an interest rate of 9.6% p.a., and lasts for just a year; by when, the mortgage debt will have increased from the £345,000 apparently needed to pay off Together Finance to £452,000, given a payment holiday of 12 months. Even if the Defendant set aside the rents of £2,500 a month in that period, i.e. £30,000, this will still represent an increase from the current debt of £345,000 to £422,000 by the end of the year for which the remortgage is to run.

(5) There are real grounds for believing that there was undue influence by the Defendant over the deceased (the evidence of her mental illness, his bankruptcy at the time, and his persuading her to enter into a large "business" loan of about £300,000 for his benefit). Whether Together Finance was on notice is an open question, but (a) it appears that solicitors acting for the deceased also acted for Together Finance, and (b) there are reasonable grounds for supposing that the solicitors, in the usual course, would have disclosed to it the purpose of the loan, i.e. to raise debts for her son's benefit. If so, Together Finance was on notice of the potential for undue influence. A claim on these grounds might well put pressure upon it to withdraw the property from auction.

46. I therefore conclude that the Defendant's application must fail, and that it would be appropriate to appoint an administrator pending suit over the deceased's estate.

Further, I conclude that Stephen Laycock would be an appropriate administrator, as he is an experienced professional and I have no reason to doubt he would perform his duties as such. Nor is there good reason to suppose that he will be wrongly influenced by his being a solicitor and consultant in the firm of solicitors acting for the Claimants. And given the urgency of the situation, it is appropriate he take over now: if problems arise later, they can be addressed later. It is true that this will involve a cost to the estate, but as I understand Mr Blackett-Ord, the Claimants in the first instance are prepared to pay for this cost.

47. I should advert to one further point which I raised in the course of the hearing, namely, does it matter that probate has now been granted to the Defendant and has not yet been revoked? Mr Blackett-Ord said this does not matter, as the will is under challenge in any event, and I did not understand Mr Young to disagree with this.

48. For these reasons alone, therefore, I dismiss the Defendant's application, and agree that Mr Stephen Laycock should be appointed administrator pending suit to administer the deceased's estate.

49. The next question is whether I should go on to make a positive order authorising Mr Laycock on behalf of the estate to threaten or to bring a claim if so advised against Together Finance. However, despite Mr Blackett-Ord's very helpful submissions, I am not persuaded I should make such a positive order. As I have said, I can see that on the evidence so far, there is reasonable case for saying that the Defendant exerted undue influence over the deceased in order to procure the charge. But whether or not there is a case that Together Finance should be fixed with such knowledge is not so clear. No doubt, they presumably asked about the purpose of the loan, and it is possible that they were told the truth (i.e. it was for the Defendant's benefit), but then made no further enquiries. If so, there may be a good case against them. Likewise, if the solicitors acting on the transaction, Messrs Obaseki & Co, acted for both Together Finance, the deceased, and the Defendant. But, although letters have been written to Obaseki & Co since last November by the Claimants' solicitors asking for clarification of the position, they have been tentative, and no substantive replies have yet been given. This is not, perhaps, surprising, because in writing the letters, the Claimants' solicitors were not acting on behalf of the estate.

50. Therefore, I am not prepared to make a positive order authorising the bringing of proceedings against Together Finance if the administrator is so advised, as I do not wish to create a misleading impression that the court has formed a view one way or the other about the merits of such a claim. All I am prepared to say is that it will be a matter for Mr Laycock, if so advised, to decide whether or not to bring proceedings. I should add that these will have to be funded by the Claimants in the first instance, as indeed Mr Blackett-Ord accepts.

51. There is one further matter on this issue, namely, the Defendant by virtue of the continuation of his undertaking and my refusal to vary it, is being prevented from doing what he sees fit with the St Donatts Road property. The Claimants' undertaking in damages should expressly cover any losses resulting from his not being able to remortgage the property as he is proposing to do.

The second issue: further orders required

52. Mr Blackett-Ord submits that the grant of probate which has now been made to the Defendant must be lodged in court pursuant to CPR 57.6(1). Mr Young does not oppose this.

53. Next, Mr Blackett-Ord submits that, given the various defaults already mentioned, the Defendant should be debarred from defending these proceedings unless within 14 days (a) he files an acknowledgment of service, (b) he files and serves a defence and counterclaim, (c) he provides the information, verified by affidavit, as he has already been required to do, by (i) providing again the information already provided and (ii) providing all other information not so far provided. This is on the understanding that if any other interested party wishes to defend the will, then that party shall be given notice of these proceedings so they can apply to run whatever defence they wish in place of the Defendant. I agree that these orders should be made, but shall give the Defendant 21 days.

54. Finally, Mr Justice Roth on 19 November 2020 ordered that the matter be transferred to the County Court. Mr Blackett-Ord submits that given that further matters may well need to be sorted out in the light of this judgment, the matter should for the time being be left in the High Court for the Master to make further directions before the transfer. I agree that this is an appropriate course.

3 Hare Court

Temple EC4Y 7BJ

Peter Knox Q.C.

22 March 2021