IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (Ch)
[2022] EWHC 2408 (Ch)

No. BL-2022-000366

Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday 14 July 2022

Before:

MR JUSTICE MILES

B E T W E E N :

(1) EUROHOME UK MORTGAGES 2007-1 PLC
(2) EUROHOME UK MORTGAGES 2007-2 PLC
(3) BEYAT HOLDINGS LIMITED

Claimants/Respondents

- and -

(1) DEUTSCHE BANK AG, LONDON BRANCH
(2) OLUFEMI OYE

Defendants/Applicants

The Claimants were not represented.

Alex Riddiford (instructed by Watson Farley & Williams LLP) appeared on behalf of the Defendants.

J U D G M E N T

Mr Justice Miles:

1 The defendants seek to strike out the claims under CPR 3.4(2)(a) or (b), or for reverse summary judgment under CPR 24.2. The defendants' case is that the claim has been brought in the names of the first and second claimants without authority and that, for related reasons, the third claimant has no standing to bring the claim. The defendants say that there is no sustainable legal basis for the claims and that they are an abuse of process. The defendants also contend that there are compelling grounds for believing that the present claim has been commenced by Mr Rizwan Hussain or directed by him in a fraudulent attempt to obtain sums from bank accounts controlled by the first defendant. They say that this too constitutes an abuse of process.

2 At a hearing in the Commercial Court on 8 July 2022, HHJ Pelling QC sitting as a judge of the High Court, struck out a very closely related claim ("the Intertrust Claim") under CPR 3.4(2)(a) and CPR 3.4(2)(b). He did so on substantially the same grounds and evidence as is relied upon before me by the defendants on the present application.

Factual background

3 I can largely take this from the skeleton argument of the defendants which reflects the evidence served in support of the application. That evidence consists of three witness statements being those of Mr Parker, Ms Whittaker and Mr Oye (the second defendant).

4 The first and second named claimants ("the Eurohome Companies") are securitisation vehicles. They issued notes as part of securitisations of portfolios of UK residential property loans and mortgages. The two securitisation transactions are operated independently and are not formally related but were originated on very similar terms. The first defendant is the cash manager for the Eurohome Companies under the securitisations pursuant to separate cash management agreements. The second defendant is an employee of the first defendant in its Trust and Agency Services Division. The third claimant ("Beyat") is a US Marshall Islands company which purports to act as a consultant to the Eurohome Companies pursuant to two purported consultancy agreements dated 6 December 2021.

5 On 30 November 2021 proceedings were issued in the Commercial Court with claim number CL-2021-000689 (the Intertrust Claim) purportedly on behalf of the Eurohome Companies and Saret Holdings Corp. ("Saret") against Intertrust Management Limited and various others, including the original directors of the Eurohome Companies. The claim form was signed by "Ajay Kumar" and particulars of claim were served on 5 January 2022 signed in the name of "Godfrey Hicks". In correspondence, Saret gave an address in Ajetake Road in the Marshall Islands.

6 In the Intertrust Claim, the named claimants contended that the following corporate events had occurred:

(1) On 11 October 2021, Saret, Keycards Holdings Inc., Mr Kumar, and United Technology Holdings Limited purportedly became members of the Board of Directors of each of the Eurohome Companies as a result of serving a notice under which they assumed the status, functions, and roles of a director of each of the Eurohome Companies with immediate effect as *de facto* directors or otherwise. I shall refer below to Saret, Keycards, Mr Kumar, and United Technology as "the Alleged *de facto* Directors" - or "ADFDs" for short;

(2) On 13 October 2021, the ADFDs, having purportedly called for a meeting of the Eurohome Companies' directors, resolved to issue a capital call for the unpaid amounts of the Eurohome Companies share capital. When this purported capital call was not complied with, the ADFDs purportedly resolved on a forfeiture of the shares and then purported to sell them to Beyat with such purported sale completing on 26 November 2021; and

(3) On 29 November 2021, the ADFDs purportedly terminated the appointments of the existing directors of the Eurohome Companies as directors and terminated the appointments of other related Intertrust companies as corporate secretary and in other roles.

7 The defendants to the Intertrust Claim were Intertrust Management Limited and various individuals and entities connected with Intertrust Management. They applied to strike out the Intertrust Claim on the basis of evidence from Ms Whitaker. She explained the following about the corporate governance and ownership of the Eurohome Companies:

(1) Since the Eurohome Companies incorporation, their only duly appointed directors have been Ms Whitaker herself and Intertrust Directors 1 Limited ("Intertrust D1") and Intertrust Directors 2 Limited ("Intertrust D2"). I shall refer below to these three directors as "the Original Directors";

(2) Intertrust Corporate Services Limited ("Intertrust CSL") is and continues to act as the company secretary of both the Eurohome Companies;

(3) The entire issued to share capital of each of the Eurohome Companies is held by Eurohome Mortgages Holding Company Limited;

(4) Intertrust CSL is also the share trustee of Eurohome Mortgages Holding Company Limited;

(5) Intertrust Management provides services and directors to each of the Eurohome Companies under corporate services each agreements dated 21 March 2017, which are in substantially identical terms;

(6) Clause 3.4 of each of the corporate services agreements provides that:

(i) The Intertrust directors will only be replaced as directors in circumstances where they resign, retire, or for any other reason cease to act; and

(ii) Intertrust Management in the role of "corporate services provider" will then, among other things, be required to nominate and procure the appointment of a replacement director;

(7) The articles of association of the Eurohome Companies, which are in substantially identical terms, provided that the company itself may appoint a director by ordinary resolution (Art. 74) or the board may appoint a director either to fill a vacancy or as an addition to the existing board (Art. 75).

8 On 18 January 2022 the defendants to the Intertrust Claim applied to have those proceedings struck out on the basis that they disclose no reasonable grounds for being brought or as an

abuse of the process. The defendants to that claim also contended that there were doubts about the identity of the individuals who had signed documents on behalf of the claimant.

9 On 2 February 2022 Judge Pelling QC directed the named claimants in the Intertrust Claim to file and serve a witness statement from each of a Godfrey Hicks, Annabel Watson, and Ajay Kumar attesting to their identity and exhibiting a copy of their passport or other form of photographic identification.

10 On 25 March 2022 Judge Pelling QC made an unless order in respect of the required identification evidence, requiring the same to be provided by 4 April 2022.

11 On 25 April 2022 the defendants to the Intertrust Claim applied to strike out the claim on the basis that the claimants had failed to comply adequately with the orders to provide identification evidence.

12 Both applications came before Judge Pelling QC on 8 July 2022. He struck out the claims.

The present claim

13 The defendants to the present claim first became aware of the purported actions undertaken by the ADFDs on 7 December 2021 when they received an email from Saret attaching a copy of a letter from Saret to the defendants relating to the Intertrust Claim dated 1 December 2021 and a copy of the claim form in the trust claim.

14 The defendants communicated with the Eurohome Companies who said that the ADFDs were not directors at all and that the various steps purportedly taken by them, including the sale of the shares and the removal of the Original Directors, had not occurred and did not have any legal effect. The defendants had no reason to doubt this.

15 On 7 December 2021 the defendants also received a letter from Saret signed in the name of Godfrey Hicks which claimed that the Eurohome Companies had entered into consultancy agreements with Beyat, the third claimant, and the purported shareholder of each of the Eurohome Companies. It enclosed two invoices for £300,000 each, one in respect of each of the companies, for consultancy fees. These had purportedly been raised under the alleged consultancy agreements. The invoices referred to a bank account held with the National Westminster Bank in the UK in the name of "Balliol Chatsworth". The address given on the invoices was the same Marshall Islands address as that that had been given by Saret on its letterheaded paper.

16 The defendants communicated with the Original Directors who said that the ADFDs had no authority to enter into consultancy agreements for the Eurohome Companies and that the agreements were therefore not binding or valid. The Original Directors requested that the first defendant should not make any payment in respect of the invoices issued by Beyat.

17 On 22 December 2021 the first defendant informed Saret that it would not make payments to Beyat.

18 On 3 March 2022 the defendants received a letter on the letter paper of Saret signed "Godfrey Hicks" which enclosed a sealed claim form in the present case. The statement of truth on the claim form and the enclosed particulars of claim, also dated 3 March 2022, were signed in the name "Ajay Kumar". The letter from Saret also gave Saret's response to the first defendant's letter of 22 December 2021.

19 On this application the defendants rely on evidence that Mr Rizwan Hussain has directed the issue of these proceedings. In particular, Mr Parker's witness statement dated 31 March 2022 includes the following evidence at para. 52:

(1) the names "Ajay Kumar" and "Godfrey Hicks" have both been linked with Mr Hussain on previous occasions as is apparent from an order made HHJ Pelling QC on 6 December 2021 in claim number CL-2021-000376 involving another securitisation called Clavis;

(2) there are strong grounds for concluding that "Godfrey Hicks" does not, in fact, exist; and

(3) in yet another claim, number BL-2021-001695 ("the Mansard Claim"), proceedings to which Beyat was a defendant and which concerned another securitisation structure and in which Deutsche Bank were purportedly required to effect payment of £300,000 in consultancy fees, HHJ Paul Matthews referred to a number of links between those steps and Mr Hussain, observing that Mr Hussain and his associates had previously carried out similar steps in relation to other securitisation vehicles (see the judgment at [2021] EWHC 3355 (Ch), especially at [87] - [94]).

20 Counsel for applicants also pointed out that the name "Godfrey Hicks" had also been used in relation to steps taken in relation to another securitisation called Business Mortgage Finance. I have given a number of judgments in relation to Business Mortgage Finance, including judgments at [2022] EWHC 353 (Ch) and [2022] EWHC 714 (Ch) in which I explained that the name "Godfrey Hicks" had been used in relation to steps taken against those securitisations.

21 Counsel also pointed out that the name "Balliol Chatsworth" was mentioned in the judgment in the case of *Mansard* [2021] EWHC 3355 (Ch) by HHJ Paul Matthews who also recorded that the name had been used in a notice issued by the regulatory news service of the London Stock Exchange on 12 August 2021 concerning another company called Hurricane Energy PLC. According to that notice, the High Court had struck out the claim and made declarations that various persons, including Mr Hussain, Annabel Watson, Beyat Holdings, and Balliol Chatsworth Limited were not officers or advisors of Hurricane Energy PLC and its subsidiaries, and had no authority to act for the company.

22 Counsel for the applicants also observed that strikingly similar steps have been taken in a number of these securitisations. Similar assertions had been made that strangers to a company had become de facto directors of the company simply by serving notices of willingness to act and stating that they were prepared to assume the position of director of the company. Those persons have then taken steps to remove the existing directors and other officers of the company and reported to cause the companies to enter into corporate steps such as contracts for the taking of legal proceedings.

23 I have reached the clear and firm conclusion that there are indeed strong connections between the present steps, the subject matter of these proceedings, and Mr Hussain. Not only are similar names including Godfrey Hicks and Ajay Kumar used, there are also common addresses, including the Marshall Islands address that I have already referred to. That has been used both by both Mr Hussain and other entities connected with him (see my judgment at [2022] EWHC 353 (Ch)). I also agree with the submission that there is a striking similarity in the steps which have been taken in respect of these various securitisation vehicles.

24 The particulars of claim in the present case allege, among other things, that:

(1) the first defendant has breached the terms of the "bank agreements" specifically by failing to make payment to Beyat of fees in response to the invoices raised on 7 December 2021 and that the second defendant has procured or induced the first defendant to do so in order to cause harm;

(2) the defendants acted together unlawfully and formed an unlawful means conspiracy with the intent to cause and, in fact, caused damage to the claimants;

(3) alternatively, the defendants intentionally caused loss to the claimants by unlawfully interfering with the freedom of the claimants in dealing with third parties; and

(4) the claimants have suffered loss and damage in the amount of £7.8 million plus interest.

25 Neither the claim form nor the particulars of claim provide any explanation for the sum of £7.8 million claimed as damages.

26 An acknowledgment of service was filed on behalf of both defendants on 16 March 2022.

27 Ms Whitaker, as one of the Original Directors, has filed a witness statement in the present application in which she states that:

(1) the ADFDs were never appointed as directors under the articles of association of the Eurohome Companies;

(2) neither of the Eurohome Companies entered into any consultancy agreements with Beyat. Neither has authorised any consultancy agreements with Beyat, and Beyat has not provided any services to the Eurohome Companies whether pursuant to any consultancy agreement or otherwise; and

(3) the present claim was commenced in the names of the Eurohome Companies without the authority of the Original Directors. The Eurohome Companies do not wish the present claim to be commenced in their names and therefore support the defendants' application to strike out the claim under CPR 3.4(2) and for reverse summary judgment of the CPR 24.2.

28 The application came on before me today. No one appeared or purported to appear on behalf of any of the claimants. The matter was clearly called on, including outside court.

29 On Tuesday of this week there was a communication in the name of "Godfrey Hicks" with the solicitors for the applicants, seeking copies of the application bundles by means other than electronic download, and that was dealt with. Counsel for the applicants explained to me that the application was properly served by way of email on the address given in the claim form. There was also an attempt to serve it at the address given on the claim form, 152 -160 City Road, EC1V 2NX but that turned out to be an empty shop premises.

30 I am fully satisfied that the application was duly served and that it is appropriate for the court to proceed with it in the absence of anyone appearing or purporting to appear on behalf of the claimants. The applicants' solicitors have undertaken to provide a further witness statement confirming what was said to me today on instructions in relation to service.

Application to strike out/summary judgment

31 The defendants rely on essentially the same evidence and submissions as succeeded before Judge Pelling QC on 8 July 2022.

32 Like Judge Pelling, I am satisfied, first, that the present claim entirely depends on the ADFDs having authority to act on behalf of the Eurohome Companies. If they did not have such authority, they could not validly have entered into the consultancy agreements with Beyat or directed the first defendant to make payments to Beyat. The other claims, including the tort claims against the second defendant, depend on establishing the validity of the consultancy agreements.

33 I am satisfied, second, that the ability of the ADFDs to bring these proceedings in the names of the first and second claimant entirely depends on them establishing that the ADFDs had and have authority to act on behalf of the Eurohome Companies.

34 I am satisfied, third, that the ADFDs were never appointed under the articles of those companies. The ADFDs purported to ratify their own appointments but only did so having already purported to remove the existing Original Directors. If they did not originally have any authority to act, they could not by pulling on their own bootstraps clothe themselves with authority by a purported act of ratification.

35 I am satisfied, fourth, that there is no legally sustainable case that the ADFDs have at any time had any authority to act on behalf of the Eurohome Companies. Those companies had a duly constituted board consisting of the Original Directors. The ADFDs have not been appointed under the articles of association of the company. All that has happened is that the ADFDs have asserted a willingness to assume the position of directors. The Original Directors have done nothing to accept the overtures of the ADFDs, or treat them as directors, or clothe them with any authority. Indeed, the Original Directors repudiated any attempts of the ADFDs to act as directors of the companies. The contention that the ADFDs became directors and were able, therefore, to take corporate steps, including entering into contracts or taking proceedings on behalf of the companies is a legal nonsense.

36 In this regard, I refer to a decision of my own concerning a very similar set of steps in the case of *BMF Assets No. 1 Ltd & Ors v Sanne Group PLC & Ors (Rev 1)* [2021] EWHC 3306 (Ch) at [49] - [50] where I 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 the 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 a 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 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."

37 If further authority were needed, the point was clearly and accurately made by HHJ Paul Matthews in the *Mansard Mortgages* case at [67] which concerned a similar stratagem and also in HHJ Pelling QCs decision in another case concerning a similar set of steps called *Eurosail-UK 2007-4BL & Ors v Wilmington Trust SP Services (London) Limited & Anor* [2022] EWHC 1019 (Comm) at [5].

38 In his ruling on 8 July 2022, HHJ Pelling QC relied on these various authorities and concluded that there was no legally sustainable case that the ADFDs had ever become directors of the Eurohome Companies. I entirely agree with that reasoning and I have reached the same conclusion.

39 I therefore conclude that the case must be struck out under CPR 3.4(2)(a) on the grounds that it plainly and obviously discloses no cause of action. I am also satisfied that the claim should be struck out as an abuse of process under CPR 3.4(2)(b) on the following basis. The claim has been commenced in the names of the first and second claimants, that is the Eurohome Companies, without the authority of their directors. The statement of truth on the claim form and particulars of claim was assigned in the name of "Ajay Kumar". For the reasons already given, there is no legally coherent case that he had any authority to sign those documents.

40 Beyat's standing to sue depends entirely on the ADFDs having authority to act for the Eurohome Companies in entering into the consultancy agreements. For the reasons already given, that is wholly unsustainable. Beyat therefore lacks any standing to sue.

41 As I have already mentioned, the defendants also contend that there is strong evidence to conclude that the present claim has been directed and procured by Mr Hussain to seek the unlawful extraction of funds from the securitizations. I have already addressed that evidence. I am fully satisfied that Mr Hussain has, indeed, being involved in the steps taken in respect of the Eurohome Companies which are the subject matter of the present case. However, in the light of my earlier decision that the case should be struck out, I do not need to reach a conclusion as to whether the actions of Mr Hussain would separately justify the conclusion that the proceedings were an abuse of process.

42 For the reasons already given the claim has no real prospects of success and that it should be dismissed in its entirety under CPR Part 24.

Totally without merit

43 I also certify that the claim brought was totally without merit. The attempts of the ADFDs to enter contracts and bring proceedings on behalf of the Eurohome Companies depended on a manifest legal absurdity. If people could make themselves directors by their say so, anyone in the world could become a director of any company. Not only is that a legal nonsense but the gambit used in this case has been considered and exposed as such in earlier published judgments of this court and the Commercial Court. This is not just a case where the claimants have failed. There was never a rational basis on which the claim could have succeeded.

Costs

44 The general rule should apply, namely that the third claimant should pay the costs of the defendants. The defendants seek their costs on the indemnity basis. They have referred to well-known principles and authorities which I need to go to. Essentially, the question is whether the conduct of a party is sufficiently out of the norm so as to justify an order for indemnity costs.

45 I am satisfied that it is appropriate in the present case to order the costs on an indemnity basis. The entire claim was based, in my judgment, on the manifest legal absurdity. It is simply inconceivable that parties who are strangers to companies should be able to make themselves directors against the opposition of the properly constituted board simply by saying that they wish to do so. That particular argument has already been exposed in a series of other decisions which I have referred to in my substantive judgment. Moreover, it is not merely the underlying transactions which are in dispute. In this case, the people responsible for bringing this claim have also purported to do so in the names of two securitisation vehicles where the properly constituted board has opposed that. They have done so, therefore, without any authority whatsoever. It is important with these kinds of instruments that the market should have certainty and that legal strangers to securitisation vehicles should not be allowed to abuse the process of the court by purporting to take steps in their names.

46 I have also concluded that it was an abuse of process for the claim form to be issued in the way it was. I also note that the address given in the claim form appears to be a false address. When an attempt was made to serve this application there, it turned out to be an empty shop premises. That is another form of abuse.

47 I also take into account the complete lack of engagement by the named claimants. They have not engaged in this application in any way, they have not served evidence, and they have not appeared on this hearing to seek to defend the claim from being struck out.

48 This is an appropriate case to summarily assess the costs (on the indemnity basis). I was provided with a revised statement of costs. I was told that the only revision from a version which was served on the respondents concerned provision relating to the recovery of VAT. It has recently become apparent that some but not all VAT will be capable of being recovered and, therefore, appropriate adjustments have been made. It seems to me in circumstances where that is the only change and where there is no change to the underlying numbers, it is appropriate for me to consider and rule on the statement of costs in the absence of the respondents. The overall amount being claimed, including VAT, is £72,287.

49 I make the following observations on the schedule. The grade A fee earner's rate is £710 as opposed to the guideline hourly rate of £512. I bear in mind that these are guidelines and are

not fixed but they are an important starting point. I do not think that this is a case of such complexity as to justify a departure from the guideline rates.

50 On the other hand, the statement of costs explains that the arrangement with the client is that while grade A rates would be charged that amount, which itself is discount from the rates charged elsewhere by solicitors, the grade C fee earner's work is charged at zero. It is important, therefore, to recognize when going through the bill of costs that although the guideline rates are about 72 per cent of the rate being charged, taking out what would otherwise be £270 under the guideline rates for a grade C fee earner, there is an element of blending that needed to be taken into account.

51 I also note that in some respects at least, most of the work seems to have been done by the grade A fee earner rather than the grade C fee earner. This includes attendance on others. In the schedule of work done on documents, the majority of the work was, in fact, undertaken by the grade C fee earner for which, as I have said, there was a zero charge. Looking at the solicitors' fees overall and taking into account those various factors, it seems to me that it is appropriate to make a relatively small deduction, essentially to reflect the fact that the grade A fees are somewhat higher than the hourly rates. But when one takes into account the blending that I have referred to, it seems to me that the reduction should be a comparatively small one and of £4,000. It seems to me that counsel's fees are slightly on the high side overall for a comparatively short hearing albeit counsel had to prepare against the possibility that the hearing would be contested. It seems to me that it would be right to deduct overall £3,000 from counsel's fees. The total shall be £60,000 plus VAT.

CERTIFICATE

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This transcript has been approved by the Judge.