



Neutral Citation Number: [2021] EWHC 704 (QB)

Case No: QB-2019-002184

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24/03/2021

**Before:**

**HUGH SOUTHEY QC (sitting as a Deputy Judge of the High Court)**

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**Between:**

**ANTHONY McGANN**

**Claimant**

**- and -**

**MICHAEL BISPING**

**Defendant**

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**Jonathan Bellamy** (instructed by **Ward Hadaway**) for the **Claimant**  
**Gabriel Buttimore** (instructed by **Faradays**) for the **Defendant**

Hearing dates: 16 March 2021  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
**HUGH SOUTHEY QC**

*Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10am on 24 March 2021.*

**Hugh Southey QC (sitting as a Deputy Judge of the High Court):**

**Introduction**

1. The Defendant in these proceedings is a professional mixed martial arts fighter. The Claimant is a sports agent / manager.
2. On 124 October 2012 the Claimant issued a claim form alleging that the Defendant had breached a management agreement by which the Claimant became the Defendant's manager.
3. On 15 December 2017 Mr Richard Salter QC, sitting as a Deputy High Court Judge, delivered a judgement determining as much of the claim as he could ([2017] EWHC 2951 (Comm)). Because there were a number of matters that could not be determined, he ordered that account and enquiry be taken of various matters.
4. The claim remains outstanding because the process of taking account and enquiry has not concluded. There have been various procedural orders made with a view to account being taken. However, that process has not concluded.
5. On 19 June 2020 the Defendant applied for an order that the Claimant's claim be struck out on the basis it was an abuse of process. Although the application notice is not entirely clear, the accompanying witness statement makes it clear that one reason why strike out was sought was the fact that the Claimant had been declared bankrupt on 10 March 2010.
6. On 16 March 2021 I heard oral argument regarding the application to strike out the claim. On that date argument focused on what was accepted by both parties to be a pure issue of law. That was the effect of the bankruptcy order. At the end of oral argument I indicated that I was going to strike out the claim. However, in light of the novelty of the issues I indicated that I wished to reserve judgment. This judgment is my judgment on the strikeout application.
7. I thank counsel for their helpful and focused submissions.

**Structure of the judgment**

8. This judgment will address the following issues:
  - i) The relevant factual background.
  - ii) The applicable legal framework.
  - iii) A summary of the parties' arguments.
  - iv) My conclusions.

**Factual background**

9. The findings of Mr Richard Salter QC make it clear that in July 2005 the Claimant and the Defendant signed a management agreement. Relevant provisions of this agreement include:

“2.1 In consideration of performing his obligations under this Agreement, you agree to pay to AM the following commissions:

2.1.1 a sum equal to 20% (twenty per cent) of all income received by you in the form of monies and/or “in-kind contributions” from any contracts entered into or substantially negotiated during the Term in relation to all income producing opportunities arising directly or indirectly from your role as a MMA fighter and/or your image and profile as a professional sportsman and entertainer including, without limitation, personal endorsement or team sponsorship, appearance fees, merchandising revenues and all other potential income (“Commercial Contracts”).

2.1.2 a sum equal to 15% (fifteen per cent) of all income received from any renewals, extensions, modifications or variations to commercial contracts entered into for a period of 3 years following the expiry of the Term.

### ***3. Obligations of AM:***

AM shall assist you in relation to the following:-

- 3.1 advising generally on the progression of your career;
- 3.2 provide you with access to first class MMA coaching and training;
- 3.3 enable you to use the MMA facilities including the cage, the gymnasium and the weights at Wolfslair MMA;
- 3.4 advise you on suitability of events to enter and the progression of your career generally;
- 3.5 use reasonable endeavours to introduce you to companies interested in entering into sponsorship endorsement merchandising, appearance packages or other income producing arrangements with you;
- 3.6 provide access to third party services (which costs you shall be responsible for provided you have approved them in advance) if reasonably required including;
  - media exposure and publicity;
  - legal and accountancy services to include tax and other specialist advice;
  - such other services which are considered beneficial to you.

3.7 AM shall at all times perform its obligations herein in your best interests and AM shall at all times work diligently and with best endeavours to promote and protect your interests.

3.8 AM shall not bear any financial responsibility for any fines and / or other penalties imposed upon you by any authority. ...

8 General

... 8.2 AM shall have the right to assign this agreement, and may do so at his discretion.”

10. As already noted, the Claimant was declared bankrupt on 10 March 2010. There was some dispute in the papers as to when persons became aware of the bankruptcy and/or its significance. Having heard argument regarding the strikeout, it appears to me to be clear that this issue is of no relevance and no party suggested that it was relevant. As a consequence I make no findings regarding this.
11. Mr Salter QC found that:
  - i) The ‘term’ in clause in 2.1.1. ended on 21 July 2011 [258.1]. Commission from contracts entered into before that date continue to be payable [271].
  - ii) For the purposes of clause 2.1.2, the 3 years ran from 22 July 2011 to 21 July 2014 [258.2]. Commission from renewals will continue after the end of the 3 year period [273].
12. As already noted above, on 24 October 2012 the Claimant issued a claim form alleging that the Defendant had breached a management agreement by which the Claimant became the Defendant’s manager.

### **Applicable legal framework**

13. Section 283 of the Insolvency Act 1986 (‘the 1986 Act’) defines a bankrupt’s estate as:
  - “(a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy, and
  - (b) any property which by virtue of any of the following provisions of this Part is comprised in that estate or is treated as falling within the preceding paragraph.”
14. Section 436 of the 1986 Act states:

““property” includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property; ...”
15. In *Gwinnutt v George* [2019] EWCA Civ 656 Newey LJ held that:

“It is “legitimate and necessary to bear in mind the statutory objective” when interpreting the 1986 Act, albeit that “however desirable it may be to construe the Act in a way calculated to carry out the parliamentary purpose, it is not legitimate to distort the meaning of the words Parliament has chosen to use in order to achieve that result” (see *Bristol Airport plc v Powdrill* [1990] Ch 744, at 758-759, per Browne-Wilkinson V-C) [10(i)].

“[T]he statutory objective of the provisions of the 1986 Act” is that, “subject to certain specific exceptions, all a debtor's property capable of realisation should be vested in the trustee for him to realise and distribute the proceeds among the creditors” (*Patel v Jones* [2001] EWCA Civ 779, [2001] Pens LR 217, at paragraph 39, per Mummery LJ). [10(ii)] ...

That approach accords with the “principle of public policy” that:

“in bankruptcy the entire property of the bankrupt, of whatever kind or nature it be, whether alienable or inalienable, subject to be taken in execution, legal or equitable, or not so subject, shall, with the exception of some compassionate allowances for his maintenance, be appropriated and made available for the payment of his creditors” (*Hollinshead v Hazleton* [1915] AC 428, at 436, per Lord Atkinson)” [10(iii)]

16. Consistent with the statutory objective identified above, in *Gwinnutt v George Newey* LJ noted how broadly the definition of property had been interpreted. He stated that:

“... Jessel MR's analysis in *Huggins* does not appear to have depended on the existence of a contract. He stressed that “property” “goes far beyond choses in action” and that the “mere fact that you cannot sue for the thing does not make it not 'property'”.” [21]

17. In this case there was no real dispute about the breadth of the term ‘property’. In particular, there is no dispute that in general contracts are property. That is obviously correct (see, for example, *Krasner v Dennison* [2001] Ch 76 at [36] – [37]).

18. In *Krasner v Dennison* it was held that a pension and annuities which had provisions that contained an expression restriction on alienation was property. Chadwick LJ held that this was because:

“... an attempt to provide, by contract, that benefits will be inalienable on a bankruptcy must fail on grounds of public policy.” [49]

19. There are limits to the extent to which contracts are ‘property’ for the purposes of the 1986 Act. As was noted by Cozens-Hardy LJ in *Bailey v Thurston & Co Limited* [1903] 1 KB 137:

“It has been established for many years that, notwithstanding the generality of the language used in the Bankruptcy Acts, there are some contracts and some rights that do not vest in the trustee. For the present purpose it is sufficient to mention contracts for purely personal service.”

20. It should be noted that the judgment in *Bailey v Thurston & Co Limited* refers to earlier legislation and not the 1986 Act. However, no party suggests that the enactment of the 1986 Act makes any material difference or means that earlier authorities can be distinguished.

21. In *Bailey v Thurston & Co Limited* the issue was whether a claim could be brought for wrongful dismissal by an employee where the claim had been commenced after the employee had been declared bankrupt. The court held that it could be. Collins MR cited and applied a passage of the opinion of Creswell J in *Beckham v Drake* 2 HLC 579 holding that:

“... a contract for the future work and labour of the bankrupt cannot be made by the assignees; they cannot hire him out (as was said by Lord Mansfield), and, as a consequence, the assignees cannot, after bankruptcy, adopt and enforce a contract made before the bankruptcy, for the application of the personal skill or labour of a bankrupt ... ”

22. In *Bailey v Thurston & Co Limited* Stirling LJ held that:

“In the case of a contract in fieri and unexecuted, which cannot be completed without the assistance of the bankrupt, the trustee would be unable to complete it without the co-operation of the bankrupt, nor could the trustee compel such co-operation. Such a contract is incapable of assignment, and in my opinion it is impossible to hold that it would vest in the trustee on the bankruptcy occurring.”

23. It appears to me that the principle that a contract for personal services is not property should be interpreted narrowly. Any other approach has the potential to undermine the statutory objective of vesting all property with the trustee in bankruptcy. It is also consistent with the broad terms of section 436 of the 1986 Act. It should be limited to those cases where compliance with the contract requires the personal services of the bankrupt.

24. It is important to note that there is one key limit on the principle that a contract for the provision of personal services is not property for the purposes of the 1986 Act. That is that where work has already been carried out before bankruptcy so that there is an entitlement to payment, that right to payment forms part of the bankrupt’s property that vests in his estate. As Collins MR held in *Beckham v Drake*:

“... I do not think it ... follows [from the principle that a contract for personal services cannot be assigned] that, where a contract to employ a trader has been broken before his bankruptcy, the assignees cannot sue upon that breach, it

having been established that rights of action in general are vested in the assignees.”

## **Arguments**

25. The Defendant’s arguments focused on the terms of the management agreement. In particular, the right to assign the management agreement was highlighted. This was said to demonstrate that the management agreement did not require personal services from the Claimant. The assignment provision meant that the contract could be performed by someone other than the Claimant.
26. The Defendant also argued that any payments due before bankruptcy had vested automatically in the Claimant's estate as defined by section 283 of the 1986 Act.
27. The Claimant argued that a sports agency contract such as that in issue is a contract for personal services. The fact that there was an assignment clause in the management agreement did not mean that the contract was assignable for the purposes of the 1986 Act. It was unrealistic to expect the trustee in bankruptcy to perform the obligations imposed by the management agreement. However, the Claimant did accept that the assignment clause would have allowed the contract to be assigned and then performed by the assignee.
28. The Claimant argued that his argument was consistent with a public policy objective of the 1986 Act. That was a desire to ensure that bankrupts could continue to earn an income.
29. The Claimant also argued that there were no payments that had accrued before the bankruptcy order in this case because liability depended upon income being received by the Defendant.
30. It should be noted that both parties were agreed that the harsh consequences of the Defendant’s arguments are irrelevant. For reasons set out below, I agree with that.
31. The parties made submissions regarding other issues. In light of the conclusions I have reached below, it appears to me that those submissions were of limited significance.

## **Conclusions**

32. There was no dispute about two matters:
  - i) If all benefits arising from the management agreement formed part of the Claimant's estate as defined by section 283 of the 1986 Act, the claim should be struck out.
  - ii) The only argument that the management agreement did not form part of the Claimant’s estate is that it was a contract for personal services.
33. I have already concluded that the principle that a contract for personal services is not property should be interpreted narrowly. However, whether or not this is correct, it appears to me that the management agreement cannot be said to be a contract for

personal services. The terms of the management agreement are clear. The agreement provides for assignment. In light of this it is not surprising that both parties agree that in principle the management agreement could be assigned. That is despite the provisions imposing obligations upon the Claimant. It is agreed that those obligations could be performed by someone else following assignment. It appears to me that the issue of whether the management agreement could in fact have been performed by the trustee is irrelevant. Firstly, even if the trustee lacked the necessary skills to perform the management agreement, that does not mean that they could not have arranged for someone else to perform it. Secondly, a pure issue of law such as that in issue cannot depend upon the qualification and experience of the trustee in bankruptcy.

34. I accept that in principle the fact that a contract has a provision dealing with assignment is not necessarily determinative when determining whether a contract is assigned to the trustee in bankruptcy under the 1986 Act. *Krasner v Dennison* demonstrates how public policy considerations may require a provision regarding assignment to be disapplied. In particular, a provision preventing assignment may be disapplied if it prevents a contract being assigned to the trustee in bankruptcy. However, here the contractual provision regarding assignment facilitates the objective of property vesting in the trustee in bankruptcy. I can see no basis for disapplying it. My conclusions regarding the provision regarding assignment do not mean that the Claimant was prevented from earning an income after bankruptcy. For example, he was entitled to enter into new agreements for the provision of services as an agent after bankruptcy.
35. It appears to me that the conclusion I have reached in the two paragraphs above are consistent with the objectives of the 1986 Act. The fact that the management agreement could be assigned meant that it had some value. That contrasts with an employment contract or other forms of contract for personal service. It is entirely consistent with the objectives of the 1986 Act for something of value to vest with the trustee in bankruptcy.
36. It may seem harsh that the Claimant continued to perform services for the Defendant after his bankruptcy and yet my conclusion means that he had no contractual right under the management agreement to payment. Both parties are agreed this is irrelevant to the legal issue, which is whether the management agreement was property that formed part of the Claimant's estate as defined by section 283 of the 1986 Act. It appears to me that this is correct. How the parties behaved after the bankruptcy cannot change the legal effect of the bankruptcy. However, it is important to note as well that the consequences may not be as harsh as it might at first appear. Both parties were agreed that the Claimant might have had a claim for restitution. However, that was not a matter before me.
37. There is a dispute as to when the Claimant became entitled to payments. In particular, there was a dispute as to whether payments became due before the bankruptcy order. In my opinion I need not resolve that dispute. The reason for this is that it is clear that any payments due before bankruptcy vested in the Claimant's estate. That is not in dispute. Any payments due after bankruptcy arose under the management agreement and, as I have already made clear, that agreement became part of the estate. It appears to me that there is no basis upon which the Claimant can claim an entitlement under the management agreement that did not vest in his estate upon bankruptcy.



38. In light of the matters above, it appears clear to me that Claimant has no claim under the management agreement. Any claim is that of the trustee in bankruptcy. As a consequence, the claim should be struck out. I invite the parties to agree an order.