



Neutral Citation Number: [2022] EWHC 1330 (QB)

Case No: QB-2022-001586

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26th May 2022

Before:

HHJ RAJEEV SHETTY
(SITTING AS A JUDGE OF THE HIGH COURT)

Between:

PROPERTY SERVICES LDN LTD

Claimant

- and -

MISS SUE ELISE NASH

Defendant

(1) MR STEVEN WILLIAMS

(2) MR GARY WILLIAMS

**(Third Parties/Interested Parties in their
capacity as Fixed Term Receivers)**

Ms Alexia Knight (instructed by **Gateley Legal**) for the **Third Parties** (Mr Steven Williams
and Mr Gary Hargreaves)

Mr Matthew Feldman (instructed by **Astute Dynamic**) for the **Claimant**

Hearing dates: 20th May 2022

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.

.....

HHJ SHETTY:

[references to the bundle start with P[Number]]

1. This hearing is the return date of an injunction that was granted by Lane J. on 12th May 2022. On that date, following a without notice hearing, an injunction was issued as set out in the bundle at P9-10.
2. This injunction ordered that:

“[1.] The Defendant, their attorney, their agency or any other representative, be prohibited until trial or further order from marketing or putting for sale at auction otherwise the following properties:

3 Culverley Mews, 27 Bromley Road, Catford, London...

4 Culverley Mews, 27 Bromley Road, Catford, London...

27B Bromley Road, Catford, London...

27D Bromley Road, Catford, London...

27E Bromley Road, Catford, London...” [hereinafter referred to as “the properties”].
3. At today’s hearing, the Defendant has not attended and is not represented. However, Fixed Charge Receivers (“the Receivers”) were appointed on 2nd September 2021 due to mortgage default by the Defendant over the properties. The Receivers have attended today through Counsel. The Receivers are clearly a party who are affected by the injunction and they have made submissions. Judgment was reserved due to court time available and the hearing far exceeding the original time allocated of 1hour which commenced at 12pm.
4. It should be noted that the injunction which was drafted by the Claimant’s legal representatives, did not comply with PD25A 5.1(2), (4) and (5). Furthermore, despite requests, the solicitors for the Receivers are still not in receipt of a note of the hearing under PD25A 9.2. No explanation for that has been given by the Claimant and no transcript of previous proceedings was obtained by the Claimant in advance of the hearing today.

BACKGROUND

5. The properties were purchased by the Defendant in 2008. They were subject to a charge in the form of a mortgage on all of the properties by two mortgage companies.
6. For whatever reason, the Defendant was in arrears on the mortgages taken out and Receivers were appointed pursuant to the terms of the mortgage on 2nd September 2021
7. The Receivers made enquiries into occupancy of the premises. On 21st December 2021, their solicitors received correspondence from a firm of solicitors called K and K Solicitors from Hatfield, Hertfordshire. The relevant fee earner who wrote the correspondence was Mr Kiran Phull. The letter purported to act on behalf of the

tenants of 4 of the 5 properties. In this letter at P178, there was also reference to the properties having been sold to GBQ Investments Ltd with Miss Lindsey Quirke (described as a former Director of GBQ) having an equitable interest in the properties. To this end, it appears that GBQ were involved in litigation concerning these properties back in 2018 (GBQ Investments Ltd v Mortgage Express, NRAM [2018] EWHC 2536 (Ch)). That litigation was referred to in further correspondence at P179 and P180 which also enquired as to the name of the occupants. A further letter was sent by K and K Solicitors on 11th January 2022 [P181] asking whether to avoid further litigation, the Receivers were prepared to allow redemption on the properties (this time the letter covered all 5 properties), or alternatively sell the properties to their client, Miss Lindsey Quirke. Thereafter there was further back and forth correspondence which led to an initial offer of £875,000 for the properties. That was rejected as it was £130,000 less than property market values attributed by the Receivers. The offer was increased to £1,005,000. However the Receiver's solicitors reaffirmed that proof of funding, confirmation of access to the properties for valuation, outstanding rent and other subsidiary matters were still outstanding. There was a response back on 18th March 2022 [P195] in which K and K Solicitors stated that "our client was in the process of organising the finance in relation to the above-mentioned properties". Quizzically the letter also stated that the "tenants have sought legal advice collectively. The tenants have stated that they do not intend to pay any rent, in relation to the above-mentioned properties until this matter has been concluded. As a result of this[,] there has been no rent for our client to forward onto you." The 'client' referred to is not mentioned by name in the preamble/heading to the letter. The letter also states that if the Receiver intends to instruct or action any alternative sales in relation the properties then their client may have to instigate litigation to protect their position.

8. There was further correspondence including a copy of a loan offer by way of email dated 11th April 2022. The Receivers responded on 22nd April 2022 [P198] and noted that the offer was unsigned and appeared to expire on the date it was sent. It was for less than the price last suggested and was conditional upon the valuation of the properties satisfactory to the prospective lender (no evidence was provided as to this). The Receivers stated that they would not proceed with the offer and would list the properties for sale by way of public auction. They reminded K and K Solicitors that their client would be entitled to bid at the auction subject to the auctioneer's Know Your Customer and Anti-Money Laundering requirements. This prompted a further response from K and K Solicitors dated 28th April 2022 [P199-201]. In that letter, inter alia, they reminded the Receiver's solicitors that there was ongoing litigation and an argument in relation to "our client's equitable interest within the properties, which may also need to be litigated on. We also understand that GBQ Investments have already exchanged, completed and paid stamp duty on the above properties..." Furthermore they asserted that:

"In the event that your client proceeds with attempting to sell the above-mentioned properties, then our client will be left with no alternative but to commence legal action against your client for what our client considers to be a breach of contract.

In open correspondence, it was clear that the sale [was] agreed on the condition that our client was to provide evidence of funding. This evidence was provided to yourselves on 11th April 2022.

It is apparent from your letter dated 22nd April 2022, that you do not intend to honour the contract entered into on 11th April 2022. We would request that your client reconsider their position, as in the event that we do not receive confirmation of your agreement to honour your contractual obligations we are advised that there will be further litigation action and this may also include an application for an injunction, damages and costs...”

9. The Receiver’s solicitors responded on 3rd May 2022 [P202] reaffirming their stance and the unsatisfactory nature of the position. It also reminded K and K solicitors that there was no contractual obligation to sell. The intention to proceed to an auction was restated.
10. There was then a new turn of events by way of correspondence from K and K Solicitors dated 12th May 2022 (P204). The letter once again does not have a heading indicating the client’s name and said as follows:

“We can confirm that we have exchanged contracts for the above-mentioned properties on 27th April 2022, with a completion date set for 28 days. However, it has been brought to our attention today by the **Purchaser’s Solicitor** [my emphasis added], that the above properties have now been placed into auction for 17th May 2022.

The Purchaser’s Solicitors have advised that if they do not receive confirmation by 2pm Friday 13th May 2022 that the properties will be withdrawn from auction the Purchaser’s Solicitors will have little choice but to make an emergency injunction application, prohibiting sale by auction.

The Purchaser’s Solicitor has also advised us that, they will be seeking to recover the costs of this application from our client and in which case, our client would seek to recover those costs from yourselves. Further to this, this correspondence will be referred to the judge when the issue of costs is to be decided”.

11. The solicitor acting was still Mr Kiran Phull. He purported to send the exact same letter to the auctioneers (Barnard Marcus) on the same date.
12. The Receiver’s solicitors queried this letter [P206]. They could not see how Ms Quirke (who K and K Solicitors had been representing) had been able to exchange contracts for a sale of the Properties to a third party when she was not the registered proprietor and in light of the fact of the appointment of the Receivers.
13. K and K Solicitors responded again by letter dated 13th May 2022 [P207]. This time they enclosed copy contracts and said that:

“We have been advised by the Purchaser’s Solicitor that they will be pursuing an injunction application if they do not receive confirmation that the above properties have been removed from the auction due to take place on 17th May 2022.

Please could you get back to us by 4pm today , so that we can notify the purchaser and avoid any further accrual of costs”.

14. In the attached 'Contracts' the buyer's conveyancer was Gabriel Awosita and the seller's conveyancer was Kiran Phull. The seller was Anthony Surage as attorney for Sue Elsie Nash.
15. The Receiver's solicitors, responded by way of letter dated 13th May 2022 [P213] and queried who K and K Solicitors now acted for. It was noted that Ms Quirke was not reflected in any of the documentation. A copy of a power of attorney was requested and K and K Solicitors were reminded that following appointment of the Receivers, Ms Nash has no power to deal with the title to the properties, whether by way of power or attorney or otherwise. The consent of the secured charge holders had not been obtained.
16. An email was then sent from K and K Solicitors dated 16th May 2022 at 13.47 [P219] in which it was said:

“Please see the attached and below received from the buyers solicitor. We are informed an injunction has been obtained at County Court. Please confirm by 2.00pm today that the properties will be immediately withdrawn from auction and all marketing will cease in accordance with the terms of the injunction.”
17. The buyer's solicitor was Mr Gabriel Awosika from Astute Dynamic Solicitors.
18. There was further correspondence. Through their investigations, the Receiver's solicitors uncovered that Mr Gabriel Awosika also happened to be a consultant for K and K solicitors. Kiran Phull also happened to be a consultant at Astute Dynamic Ltd [P220 and 222]. K and K Solicitors responded to this by saying that:

“The correspondence you refer to has been received from an independent solicitors firm as part of an arm-length transaction, the consultancy has no relevance what so ever.” [P224]

THE INTERESTED PARTY

19. Mr Feldman, on behalf of the Claimant, raised a preliminary matter in his submissions concerning the status of the receivers because of the terms of the order and because the Receivers have not applied to be joined as a party to proceedings.
20. Ms Knights, on behalf of the Receivers submits that it is perfectly proper for them to appear because the injunction affects her party's rights. There is no need for them to become a party to the claim. There is no allegation in the particulars of claim filed against the Receivers. Instead, it is a matter of fact that the injunction affects the ability of the Receiver to deal with the properties. She also reminds the court that the injunction was not drafted with the usual undertakings and clauses that one would expect in respect of service and the ability of any party affected to be able to apply to continue/vary/discharge. However, there is a generic “liberty to apply” paragraph at paragraph 4 and the return date does not seek to limit the ability of any party to attend albeit paragraph 2 states that the return date would be on notice to the defendant.

21. I am in no doubt whatsoever that the Receivers are entitled to make submissions and participate at today's hearing. They are an affected third party/third parties. The receivership means that the Receivers as a matter of law, act as agents of the Defendant and are prohibited by the injunction from placing the properties into auction or otherwise marketing them. The whole idea of the return date is to make sure there is potential redress to a party affected by an injunction who was not aware of or unable to attend a without notice/urgent hearing in which the injunction was obtained. It does not matter at all that the Receivers have not applied to become a party to the claim. The Particulars of Claim makes no allegations against them and in any event the claim form was issued on 18th May 2022 (the day before today's hearing).

SHOULD THE INJUNCTION BE VARIED/DISCHARGED OR CONTINUED?

22. It is well known that an injunction is a form of equitable relief and is discretionary. The discretion is of course bound by circumstances of reasonableness. There are well known principles of equity that concern conduct and coming to equity with clean hands.
23. The Receiver's primary submission is that the Claimant/Claimant failed in their duty of disclosure to Lane J in the first instance. They emphasise that there is no note of attendance as is required nor any transcript of the hearing. They have only as of this morning been able to see the witness statement and enclosures filed in support of the application.
24. The witness statement of Tanya Minhas, who is the Director of Property Services Ldn Ltd (the Claimant), is dated 10th May 2022. It suggests that a Memorandum of Sales between the Claimant and the Defendant were set on 25th March 2022. It further states that on 27th April 2022, the Sales Contracts and the Memorandum for Exchange for the properties were received. It alleges that on 28th April 2022, contracts had been exchanged and the deposit sums had been transferred and an intention to complete was put forward for 5th May 2022. On 6th May 2022, the defendant's solicitors (K and K Solicitors) informed the Claimant's solicitors that the Defendant no longer wished to proceed with the relevant sale transactions as the Defendant had received a higher offer on the relevant properties from another property. That was the basis of her seeking an injunction. There is no mention within that witness statement of mortgage or the attendant charge on the property, or of the Receivership or any auction taking place in May 2022. Notwithstanding this, the terms of the injunction do make reference to "putting for sale at auction or otherwise".
25. In her second witness statement dated 18th May 2022 (but received only this morning on the day of the hearing), Ms Minhas avers at paragraph 4 (P66) that:
- "At no point in time, was I aware of any Receivers being involved in these properties, nor this transaction. Contracts were exchanged on the above properties, in good faith on 27th April 2022".
26. This witness statement has been verified by a statement of truth but Counsel for the Receivers has drawn to my attention a number of things that may be inconsistent with Ms Minhas' apparent ignorance of the existence of a Receiver. The factors can be set out as follows:

(a) the Claimant's solicitor (Mr Gabriel Awosika) is a consultant at K and K Solicitors (the Defendant's solicitors);

(b) the Defendant's solicitor (Mr Kiran Phull) is a consultant at the Claimant's solicitors.

(c) K and K Solicitors previously acted for a prospective buyer (Ms Quirke) of the properties as well as purporting to act for the tenants of the properties. This was at the same time that they then purported to act for the registered owner of the same property (the Defendant). See the letter dated 28th April 2022 at P199 and compare to the letter dated 12th May 2022 at P205 which then states that on 27th April 2022, an exchange of contracts took place between the Purchaser's solicitor and whoever it was they acted for (seemingly they switched from acting for Buyer to Seller despite acting for both in the same two day time frame). In the letter on 28th April, K and K Solicitors had actually complained that the Receivers had entered contracts for sale with their client and had breached that contract. No mention was made of the contract with the Purchaser (despite the same fee earner) and one would expect Mr Phull to have mentioned that or have been aware of it.

(d) The letters from K and K Solicitors to the Receiver's solicitors specifically refer to the purchaser's solicitors being aware of the forthcoming auction. Of course this comes from the mouth of K and K solicitors but it is an odd thing to assert on behalf of someone. Moreover, K and K Solicitors knew the Receivers were intending on proceeding to an auction in any event. The letter at P205 professes that they came into knowledge about an auction from the buyers yet they were told about the intention to auction in previous correspondence when they acted for the buyer.

27. The Claimant's response to these matters is muted. There is no reference to it in the Claimant's skeleton argument. The letter from K and K Solicitors at P224 simply says this is "part of an arms-length transaction, the consultancy has no relevance what so ever." The second witness statement of Tanya Minhas at P65 simply asserts that she was not aware at any point of any "Receivers being involved in these properties, nor this transaction". Much of the Claimant's submissions today has rotated on the Receivers being offered a purchase price that is close to a true valuation of the properties but Mr Feldman has not really addressed the real issue of full and frank disclosure. It would appear he has the same paucity of information as the Court and the Receivers.

28. My conclusions on the matter are as follows. The two solicitor firms involved in the so called transaction to buy the properties very obviously have a connection by virtue of the fee earners having roles in both firms. The fact that K and K Solicitors appeared to act for a buyer at one point and then the seller/owner in the space of a month is incredible. One of the first things any competent and genuine solicitor would do when drafting contracts for the purchase of a property would be to look at the land registry information. This reveals the mortgage charge and the Receivers. In any event, one of the conveyancing firms had been dealing with the solicitors for the Receivers for a prolonged period. It is inconceivable that they then acted in supposed ignorance of the existence of the Receivers when an exchange was supposed to take place a short time later. If the actions of these two firms were genuine, one of the first things K and K solicitors would say is something to the effect of: "We are happy to

accept the offer but you should be aware that the properties are mortgaged and Fixed Term Receivers have been appointed due to default by Ms Nash...". I am afraid to say that in my view, the entire purchase and exchange of contracts appears to be some kind of ruse or sham to prevent the Receivers from selling the properties at an auction after the Receivers had refused to transact with the first interested buyer (Ms Quirke).

29. The true aim of the injunction was to prevent the properties reaching auction and the Claimant sought not to even inform the Receivers as an interested party to that application knowing full well they would be affected. In my judgment, the Claimant has failed to act in utmost good faith and failed to disclose to the court all matters which were material to be taken into account by the court in deciding whether or not to grant relief without notice. This was not innocent but deliberate. The matters concerning Receivers being appointed were obviously material because a judge exercising jurisdiction and discretion might well have decided that owing to the Mortgagee's consent being required to sell, there was no possibility of the legal title of the properties being transferred in any event. Even if I am wrong about that, there were no proper enquiries before making the application (*Bank Mellat v Nikpour* [1985] FSR 87).
30. I am conscious that I have decided this issue without hearing live evidence. However, it seems to me that the facts are so plain that they can be readily and summarily established (see: *Andrey Rogachev v Mikhail Goryainov* [2019] EWHC 1529 (QB) at [78](3)).
31. The consequences of failure to make a full and fair disclosure in my judgment should be that the Claimant is deprived of any advantage she may have derived by the breach of duty (see Donaldson LJ in *Bank Mellat*). This is because the breach in this case is so fundamental, and because of the actions of both solicitors involved in the purchase is so dubious that there is real doubt as to whether or not it is genuine. There is a need for compliance with the rules on disclosure and penal consequences are necessary to encourage compliance with the rules.
32. In the circumstances, I do not go on to address the issues of whether there is a serious issue to be tried, whether damages would be an adequate remedy and the balance of convenience in any detail save to add the following. There is a high level of suspicion about the genuineness of the transaction between the Claimant and Respondent. There is no good proof of any bank transfers between the parties to establish a deposit being paid (which was curiously small at far less than the common 10% in transactions). The Receivers were proposing to sell the properties at auction with full knowledge of their responsibilities (evidenced in correspondence). The purported sales would not discharge the sums outstanding to the Receivers. There would be a real risk of injustice being caused to the Receivers and the lenders. The lenders have enforceable and undisputed contractual rights under legal charges secured on the properties. The balance of convenience would rest in favour of discharging the injunction in any event.

HHJ Rajeev Shetty

26th May 2022