



Neutral Citation Number: [2024] EWHC 1349 (Ch)

Case Nos: PT-2021-000639 / PT-2023-001031

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND
WALES PROPERTY TRUSTS AND PROBATE LIST

The Rolls
Building 7
Rolls Building
Fetter Lane, London
EC4A 1NL

Date of hearing: Monday, 20 May 2024

Before:

MRS JUSTICE JOANNA SMITH

Between:

(1) TRANSOMAS LIMITED
(2) TRANSOMAS INVESTMENTS LIMITED **Claimants**

- and -

(1) KHERI TRADING LIMITED
(2) TARNJIT SINGH GILL **Defendants**

- and -

JAGJIT KAUR **Third**

KHERI TRADING LIMITED **Party**

-and

(1) TRANSOMAS LIMITED **Claimant**
(2) TRANSOMAS INVESTMENTS LIMITED

-and-

JAGIT KAUR **Defendants**

Third Party

MR M ANDERSON KC and MS G. McNICHOLAS (instructed by **Macfarlanes LLP**) for
the **Applicants**

THE RESPONDENTS did not attend and were not represented

Approved Judgment
(On Non-party Costs)

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MRS JUSTICE JOANNA SMITH:

1. In circumstances where I have already refused a deemed application for an adjournment of this hearing for reasons given in a judgment that I gave earlier this morning, I now turn to deal with the applications by the defendants to the Hotel Claim, also the claimants in the Redemption Claim, that the costs in respect of both claims should be paid personally by Ms Jackie Kaur who I will refer to again as “Jackie” with no disrespect intended.
2. Jackie is the sole director of Transomas Limited (“**TL**”) and Transomas Investments Limited (“**TIL**”) (together “**the Companies**”) defendants in the Redemption Claim and claimants in the Hotel Claim. Although I set out a little as to the background to those claims this morning when dealing with the deemed application to adjourn this hearing, it will assist an understanding of this judgment as a whole to set that background out now in a little more detail.
3. The Redemption Claim was a Part 8 claim by Kheri Trading Limited (“**KTL**”) as mortgagor for orders of redemption in respect of two legal charges registered over the Westbourne Hotel, Paddington (“**the Hotel**”) in favour of TL and TIL. The trial came on for hearing on 22 July 2021 but was vacated on the application of TIL and TL in circumstances where they had issued the Hotel Claim, a Part 7 claim, very shortly before the trial. In his judgment on the issue of vacation of the trial, HHJ Richard Williams recorded that he was dealing “in essence” with a family dispute arising from arrangements put in place by Jackie’s father, Jack, which enabled KTL, a company owned by Mitch, Jackie’s brother, to acquire the Hotel. He also recorded a submission from KTL to the effect that the timing of the Hotel Claim was a “cynical attempt to avoid the redemption claims when there is no defence to them.” He reserved the costs of the application. In my judgment, that submission was prescient in light of the matters to which I shall come.
4. The Hotel Claim was commenced on 16 July 2021 and involved a dispute between the Companies and Mitch and KTL over the ownership of the Hotel. Specifically, it was alleged that Mitch had defrauded Jack into selling the Hotel to him. Although no allegation of conspiracy was pleaded, it was alleged that this had been achieved together with Mr Patel, a chartered accountant. The claim alleged that Jack had been induced to enter into the transfer of the Hotel by reason of three misrepresentations made by Mitch and/or Mr Patel. The claim sought rescission of the transfer.
5. On 13 November 2023, the first day of trial in the Hotel Claim, which had been listed since June 2022, Jackie informed the Court that she did not intend to represent the Companies and that there was no one else to represent them. The Hotel Claim was dismissed. On 17 November 2023 KTL and Mitch issued an application to join Jackie to both the Hotel Claim and the Redemption Claim for the purposes of costs.
6. At a consequential hearing on 24 November 2023, I ordered that KTL was entitled to have its costs thrown away by the vacation of the trial in the Redemption Claim on an indemnity basis and that KTL and Mitch were also entitled to have their costs of the Hotel Claim on an indemnity basis. I ordered that Jackie be joined as a party to both claims for the purposes of costs only. The Order left open whether the indemnity costs were to be paid by the Companies or by Jackie. I also ordered that the question of whether Jackie be made personally liable for costs should be determined at a hearing

on 26 January 2024 and I gave Jackie permission to file a witness statement by 4.00 p.m. on 5 January 2024 addressing this issue. In circumstances which I set out in detail in my judgment of earlier this morning, Jackie has had every opportunity to file evidence in reply but has failed to do so. She has also failed to attend at this hearing and has provided the court with no explanation for this failure.

7. Notwithstanding that the applications for non-party costs have effectively been unopposed, Mr Anderson KC for the applicants took me carefully to the key aspects of his applications together with the evidence in support. In advance of the hearing, I also read his detailed and lengthy skeleton argument.

The Law

8. The jurisdiction to make a third party costs order derives from sections 51(1) and (3) of the Senior Courts Act 1981 which provide:

“Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in—

...

(b) the High Court....

... shall be in the discretion of the court.”

“The court shall have full power to determine by whom and to what extent the costs are to be paid.”

9. That power is now enshrined in CPR 46.2 to which Mr Anderson also took me during his submissions this morning. In particular, he took me to the notes in Volume 1 of the White Book at 46.2.2 which refer to various guidelines in relation to the making of costs orders against non-parties, emphasising in particular the guideline at (1) which reads as follows:

“Although costs orders against non-parties are ‘exceptional’, exceptional means only that the case is outside the ordinary run of cases which parties pursue or defend for their own benefit and at their own expense. The ultimate question in any such exceptional case is whether in all the circumstances it is just to make the order. Inevitably, this will be fact specific to some extent.”

10. He also took me to (3):

“If however the non-party not only funds but controls or benefits from the proceeding, justice will ordinarily require that they will pay the successful party’s costs if the funded party fails. The non-party is not so much facilitating access to justice as themselves gaining access to justice for their own purposes and are themselves a real party to the litigation.”

11. Mr Anderson also took me to the notes at 46.2.3 as to litigation controllers, referring me in particular to the Court of Appeal decision in *Goknur Gida Maddeleri Enerji Imalet Ithalat Ihracat Ticaret ve Sanayi As v Aytaccli* [2021] EWCA Civ 1037 per Coulson LJ, in particular at [40] where, after referring to various authorities on the point, he said this:

“Without in any way suggesting that these authorities give rise to a sort of mandatory checklist applicable to a company director or shareholder against whom a s.51 order is sought, I consider that the relevant guidance can usefully be summarised in this way:

a) An order against a non-party is exceptional and it will only be made if it is just to do so in all the circumstances of the case...

b) The touchstone is whether, despite not being a party to the litigation, the director can fairly be described as ‘the real party to the litigation’...

c) In the case of an insolvent company involved in litigation which has resulted in a costs liability that the company cannot pay, a director of that company may be made the subject of such an order. Although such instances will necessarily be rare... s.51 orders may be made to avoid the injustice of an individual director hiding behind a corporate identity, so as to engage in risk-free litigation for his own purposes... Such an order does not impinge on the principle of limited liability...

d) In order to assess whether the director was the real party to the litigation, the court may look to see if the director controlled or funded the company’s pursuit or defence of the litigation. But what will probably matter most in such a situation is whether it can be said that the individual director was seeking to benefit personally from the litigation. If the proceedings were pursued for the benefit of the company, then usually the company is the real party... But if the company’s stance was dictated by the real or perceived benefit to the individual director (whether financial, reputational or otherwise) then it might be said that the director, not the company, was the ‘real party’, and could justly be made the subject of a s.51 order...

e) In this way, matters such as the control and/or funding of the litigation and particularly the alleged personal benefit to the director of so doing are helpful indicia as to whether or not a s.51 order would be just. But they remain merely elements of the guidance given by the authorities, not a checklist that needs to be completed in every case...

f) If the litigation was pursued or maintained for the benefit of the company, then common sense dictates that a party seeking a non-party costs order against the director will need to show some

other reason why it is just to make such an order. That will commonly be some form of impropriety or bad faith on the part of the director in connection with the litigation...

g) Such impropriety or bad faith will need to be of a serious nature... and, I would suggest, would ordinarily have to be causatively linked to the applicant unnecessarily incurring costs in the litigation.”

Then at [41]:

“Therefore, without being in any way prescriptive, the reality in practice is that, in order to persuade a court to make a non-party costs order against a controlling/funding director, the applicant will usually need to establish, either that the director was seeking to benefit personally from the company’s pursuit of, or stance in, the litigation, or that he or she was guilty of impropriety or bad faith. Without one or the other in a case involving a director, it will be very difficult to persuade the court that a s.51 order is just. Mr Benson identified no authority in which a s.51 order was made against the director of a company in the absence of either personal benefit or bad faith/impropriety. Conversely, there is no practice or principle that requires both individual benefit and bad faith/impropriety on the part of the director in order to justify a non-party costs order. Depending on the facts, as the authorities show, one or the other will often suffice.”

12. *Goknur* involved an insolvent company. In this case, there is no suggestion that either TIL or TL is insolvent, but Mr Anderson submits (and I accept) that the insolvency of a company is not a prerequisite of an order of this type, albeit that the principles set out in *Goknur* remain relevant to the exercise of the Court’s discretion.
13. In addition, I observe that the jurisdiction is summary in nature (see *Hilden Developments Ltd v Phillips Auctioneers Ltd and Others* [2023] Costs LR 1447 at [28(5)]) such that the Court is required to balance considerations of proportionality and justice bearing in mind that this is a form of satellite litigation which should not be allowed to expand beyond reasonable bounds. In most cases justice is adequately served by the Court doing the best it can to resolve disputed matters on the documents. As the Court of Appeal put it in *Deutsche Bank v Sebastian Holdings* [2016] EWCA Civ 23 at [62]:

“The only immutable principle is that the discretion must be exercised justly.”
14. The applicants submit that Jackie was the real party to both the Hotel Claim and the Redemption Claim. I agree, essentially, for the following main reasons.
15. The application notices themselves assert that Jackie is the real party in the Hotel Claim and the Redemption Claim. They both set out the reasons why this is so. Despite being given every opportunity to do so, Jackie has never sought to gainsay what is said in the application notices or the various witness statements from Mr Ward in support. In the

circumstances, I am inclined to agree with Mr Anderson's submission today that, absent evidence in reply, the assertion that Jackie is the real party, Claimant in the Hotel Claim and Defendant in the Redemption Claim, is irresistible. However, I also consider that the available evidence is overwhelming in its support for this proposition.

16. Mr Anderson showed me today the evidence that Jackie has been acting, from the outset, in pursuit of a strategy designed to achieve a reversal of a 2017/2018 estate planning exercise that was entered into by her parents with the assistance of professional advice before Jack's death. This exercise resulted in her brothers receiving a substantial share in their parents' estate without her knowledge.
17. Contemporaneous correspondence dating back to before the commencement of the Hotel Claim and the Redemption Claim to which my attention was drawn both orally and in writing includes emails of 28 September 2020, 2 December 2020, 4 December 2020, 15 December 2020, 18 December 2020, 17 January 2021, 18 January 2021, 26 January 2021 and 29 January 2021. These emails plainly evidence an animosity on the part of Jackie towards Mitch arising by reason of her obvious anger and frustration that her father, Jack, had transferred his business interests to her brothers and not to her. It is clear from these emails that Jackie was primarily concerned with recovering for herself the benefits that her father had conferred on her brothers and that she perceived that the best way to achieve this was to make a myriad of threats and allegations against them designed to exert pressure. Her emails are often aggressively worded and accusatory. One suggests that signatures have been forged, another that criminal fraud has taken place and yet another alleges "deflection, evasion and stalling" against Mitch. They all appear to be written primarily on her own behalf and not on behalf of the Companies and I agree with Mr Anderson's submissions that they appear to be seeking to weaponise Jackie's directorship of TIL and TL against her brothers.
18. The same contemporaneous correspondence shows that Jackie had decided to pursue Mitch for fraud in relation to the Hotel transaction well before the merits of that claim had ever been investigated by an independent firm of solicitors.
19. In November 2020 the loan on the Hotel fell due for payment. Mitch was not able to pay immediately and this appears to have given Jackie the opportunity she needed to try to resist redemption of the loan. By early 2021, KTL and Mitch had sought a redemption statement in respect of the loan on the Hotel but, far from providing a redemption statement (which would have been in the interests of the Companies), Jackie sought to use KTL's need for such a statement as a lever to try to secure information and disclosure about all sorts of unrelated matters relevant to the overarching dispute about Jack's estate. Jackie's initial refusal to recognise the right of redemption caused Mitch and KTL to incur substantial costs and to issue the Redemption Claim in March 2021. However, the emails to which I have referred plainly evidence that this was simply a strategy to put pressure on Mitch and to try to postpone the inevitable.
20. Once Jackie instructed solicitors in the Redemption Claim, the Companies were forced to accept that there was a right of redemption and that it was their duty as mortgagees to furnish a redemption statement. However, the matter was defended to trial on the grounds of alleged continuing confusion as to the correct amount to be paid, notwithstanding that there was in fact very little between the parties on the figures. Had Jackie been focusing on the Companies' interests at this point, she would have been

swift to provide the required redemption statement, thus securing a very significant redemption payment from KTL. TIL had never owned the Hotel but, in common with TL, was plainly interested in being repaid in respect of the loan. Instead, Jackie continued to use Mitch's desire to redeem the loan as leverage in the ongoing dispute over Jack's estate.

21. When it became clear that redemption would inevitably take place and that there was no defence to the Redemption Claim, the Hotel Claim was commenced, causing the trial of the Redemption Claim to be vacated on the very day of the hearing and ensuring that redemption would be further delayed. I have little doubt that, as Mr Anderson submits, Jackie hoped that by delaying redemption further (and in the middle of the Covid-19 pandemic) KTL might ultimately be unable to meet its repayment obligations, thereby enabling TL to get the Hotel back, something from which, as I shall come to in a moment, she would personally benefit.
22. In securing an order to vacate the Redemption Claim trial without any adverse costs order on the basis of serious allegations of fraud and document destruction contained in a witness statement provided to the court, Jackie was plainly acting primarily in pursuit of her own interests. She did not bring the Hotel Claim because of a belief in its merits, as is to be inferred from the way in which that claim ended, but rather to bring further pressure to bear on her brothers and to delay the outcome of the Redemption Claim.
23. Jackie signed a statement of truth on the pleadings and pursued the Hotel Claim herself after Withers came off the record in September 2023. During the two years they were on the record, Withers repeatedly confirmed that they were taking instructions only from Jackie. During her submissions on 13 November 2023 in support of an application to adjourn the trial of the Hotel Claim, Jackie confirmed that she had provided significant personal funding to the Companies to enable the claim to continue, an obvious pointer towards her personal involvement in, and commitment to, the Hotel Claim. Indeed, it seems from submissions made to the court in the United States that she had originally been using funds from companies controlled by her brothers to fund the Hotel Claim, and was only prevented from doing so by an injunction.
24. That Jackie found ways to fund the Hotel Claim is unsurprising given that she had a clear financial interest herself in that claim. The evidence shows that it was intended that she would inherit her mother's ("**Amarjit**") controlling stake in Jack's estate, approximately 53% of Regency Holdings LLC ("**Regency**"), the Delaware corporation used to hold Jack's corporate interests, and that she has in fact already obtained that stake, presumably by transfer to herself of Amarjit's shares. Regency owns TIL and TL outright. Accordingly, if the Hotel Claim had succeeded or settled advantageously, Jackie would have benefited directly through her ultimate control of Regency. A statement at the time of her application to adjourn the Hotel Claim trial to the effect that the claim was all about "protecting Amarjit" was very far from being the truth. The evidence suggests that Jackie had already taken control of Amarjit's share in Regency by then and was acting in her own interests.
25. Indeed Jackie's statement of 11 October 2023 in the Hotel Claim in support of the application to adjourn the trial confirmed that the true purpose of the proceedings and the obstruction of the Redemption Claim was her desire to obtain a "global family settlement agreement". This echoed the words of HHJ Richard Williams to which I

have referred and Jackie elaborated on this theme at the hearing on 13 November 2023, describing the intertwined nature of her parents' personal, company and financial interests and criticising her brothers for a campaign designed to "hijack our parents' estate planning." It was clear that the Hotel Claim was designed to further her own interests in recovering what she perceived to be her rightful share of her father's estate. In my judgment, both the Hotel Claim and the Redemption Claim can only be seen in the context of this highly acrimonious and destructive family dispute.

26. The applicants have drawn my attention to numerous examples of conduct on the part of Jackie which is impossible to reconcile with the best interests of the Companies. This conduct includes, first, the continuous allegations against Mitch of document destruction, found by this Court at the consequential hearing in November 2023 to be "entirely misconceived". Jackie had advanced this allegation in her witness statement in the Redemption Claim, as well as making it on numerous occasions in the email correspondence I have seen, clearly with a view to putting pressure on Mitch. It was not in the Companies' interests for such unsubstantiated allegations to be made and her continuing reference to them can only have been designed to bolster her own credibility and advance her own ends.
27. Second, the introduction by the Companies of three peripheral claims into the Hotel Claim between November 2021 and January 2022. KTL and Mitch's solicitors warned the Companies' solicitors, Withers, that these claims were unmeritorious. They also raised the spectre of a costs order against Jackie on the grounds that she was behind the making of these new allegations. I need not go into the detail of these claims but mention only one by way of example. The so-called "unauthorised payments claim" sought an account for seven payments made by the Companies to Mitch. The Companies said in the Hotel Claim that these payments had not been made pursuant to the existing loan facilities between the Companies and Mitch, yet in the Redemption Claim they asserted the opposite. This was plainly an abuse of process. Suffice to say that I found in my judgment at the consequential hearing that the three additional claims were "apparently abusive" and that this fact supported my decision that the pursuit of the Hotel Claim had been "out of the norm" for the purposes of making an order for indemnity costs. It was not in the Companies' interests to advance obviously misconceived claims and I can only infer that Jackie was the driving force in advancing these claims, presumably because she perceived she would obtain some advantage in the context of the global family dispute by so doing.
28. Third, the witness statements filed in the Hotel Claim by Jackie on the Companies' behalf failed properly to engage with the issues at stake in the proceedings but chose instead to make serious and unfounded allegations, again, against Mitch, evidencing yet again Jackie's pursuit of the proceedings with her own agenda in mind and for her own interests.
29. One good example of Jackie's failure properly to engage with the issues at stake to which my attention was drawn during oral submissions this morning was her failure ever to provide any evidence of Mr Patel's alleged conduct which went to the very heart of the allegations in the pleaded case. This failure is to be seen against the background of her continuing employment of Mr Patel, a feature which gives the lie to her allegations of fraudulent conduct against him.

30. Fourth, Jackie's pursuit of her own agenda persisted in her ill-conceived adjournment application in November 2023 which she used to advance yet further serious allegations of wrongdoing against Mitch (see [8] and [9] of my judgment dismissing that application) and in which she expressed a desire to consolidate the Hotel Claim with other ongoing legal proceedings involving the family elsewhere (see [15(b)] of my judgment). To my mind, this betrayed the fact that her underlying motivations had nothing whatever to do with the best interests of the Companies and everything to do with trying to further her own interests in pursuing her share of Jack's estate.
31. Fifth, Jackie's refusal to represent the Companies on the first day of the trial in the Hotel Claim, citing *her own interests* as the reason for that refusal. This appears to me to be extremely telling. I warned Jackie in very clear terms at the time as to the consequences of refusing to represent the Companies, namely, dismissal of the Hotel Claim, but this did not deter her. I agree with Mr Anderson that the only reasonable inference to draw from the circumstances in which the Hotel Claim was abandoned is that Jackie never had any real belief in its merits and has always been focused on her own interests, as opposed to the best interests of the Companies.
32. It was obviously not in the Companies' best interests to pursue an unmeritorious claim at vast expense to the door of the court and then, effectively, to put themselves in a position where they had no representation for the trial. The obvious consequence of Jackie's failure to secure representation (legal or otherwise) for the Companies (when their assets position suggested that they could have afforded it) was that she would have to represent them at trial. Once she decided not to represent them at trial, it was inevitable that their claim would be dismissed and costs orders would be made against them. I made a number of observations about this in my judgment at the consequential hearing, including that:
- “It is difficult to see how the decision not to represent the claimants could possibly have been taken with their best interests in mind in circumstances where it could only lead, as I am sure Ms Kaur understood, to a dismissal of the claim.”
- and that:
- “It would appear from various observations she made on the first day of the trial, including as to the existence of criminal proceedings involving her personally, that her decision not to represent the claimants may more likely have been motivated by her own personal interests than by consideration of what might be in the best interests of the claimant companies.”
33. Jackie had everything to lose at the trial when she would have been cross-examined and her ulterior motives exposed. I agree with the applicants that it is impossible to reconcile a genuine belief in the merits of the Hotel Claim with a failure to instruct solicitors for the trial and a refusal on her part to represent the Companies.
34. In my judgment, the matters to which I have already referred support the proposition that it is plainly just to make a non-party costs order against Jackie. However, I also consider there to be an additional factor which serves to strengthen the position on the application: namely, her conduct over the course of the litigation.

35. I have already referred to the fact that Jackie has repeatedly made very serious and unsubstantiated allegations against Mitch and I have already found those to be completely misconceived. I have also held previously that the Companies have a history of breaching procedural orders (including orders of 18 July 2023, 11 September 2023, 28 September 2023 and 27 October 2023), something which I can only infer has been the responsibility of Jackie. None of those breaches can possibly have been in the best interests of the Companies. I consider this conduct to be serious and to have caused the applicants to incur substantial additional costs in the litigation. As a sophisticated litigant with legal training, Jackie would have been well aware of the seriousness, and possible consequences, of a non-compliance with court orders.
36. For all the reasons I have set out, I consider it to be just to make an order in relation to the costs of the Hotel Claim and the Redemption Claim. Jackie appears to me to be the author of her own downfall in this regard. At all times she has had her own motives for pursuing both sets of proceedings and has quite obviously failed to have regard to what is in the best interests of the Companies of which she is the sole director. Just as was also the case in the recent decision in *Hilden* to which I have already referred, the nature, tone and content of her own correspondence is particularly telling. Her emails evidence that she is deeply and personally committed to pursuing claims and advancing allegations, whether true or not, against Mitch in any way possible. She has been the driving force in advancing improper and abusive allegations both against Mitch personally and against KTL. She has also advanced allegations against lawyers involved in these proceedings which have been wholly unsubstantiated. All of these things have inevitably wasted costs.
37. Between November 2021 and September 2023 Jackie was repeatedly warned in solicitor correspondence that her pursuit of the Hotel Claim could result in an application that she be held personally responsible for the costs and, as a sophisticated litigant, she would have understood exactly what that meant.
38. Furthermore and finally, I consider that it would be positively unfair to require Mitch and Jag, as ultimate shareholders in the Companies to the tune of approximately 46 %, indirectly to bear the costs of the failed proceedings (see *Goldberg London Limited v Primelodge Developments Limited* [2023] Costs LR 469 at [8]).
39. The justice of this case plainly requires an order for non-party costs against Jackie so as to prevent her from hiding behind a corporate identity and thus engaging in what would otherwise be, for her, risk-free litigation. I shall make the order sought in relation to both claims.

(This Judgment has been approved by the Judge)