



Neutral Citation Number: [2023] EWHC 2947 (KB)

Case No: KB-2023-003725

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 November 2023

Before:

HIS HONOUR JUDGE BLAIR KC
sitting as a Deputy Judge of the High Court

Between:

MICHAEL JOHN HARVEY
- and -
SANTANDER UK PLC

Claimant

Defendant

The Claimant appeared in person
Charlotte Eborall (instructed by Addleshaw Goddard) for the Defendant

Hearing dates: 7 November 2023

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and release to National Archives. The date for hand-down is deemed to be on 21 November 2023.

His Honour Judge Blair KC :

1. This judgment concerns an application made, on notice, by the Claimant for an interim mandatory injunction to compel the Defendant to “*un-freeze the Claimant’s bank account [number provided] with immediate effect and allow the Claimant to manage the funds therein*”. He also seeks an injunction forbidding “*the Defendant... (whether by himself or by instructing or encouraging or permitting any other person) from imposing any further restriction of the account without a court order.*”

The background

2. The Claimant opened the business account, which is the subject of this application, in 2004 with the Abbey National Bank.
3. After Abbey National PLC was acquired by Banco Santander S.A., it was later rebranded as Santander UK PLC (the Defendant). Thus it was that the Claimant came to be a customer of the Defendant.
4. The Defendant provides banking services for its business customers on the basis of General Terms and Conditions (as amended from time to time) which are published on its website.
5. The Claimant opened the account in question not long after he had been struck-off from the Solicitors’ Roll as a result of his involvement in promoting investment schemes dishonestly. The schemes he had helped promote failed and a great many people lost a significant amount of money.
6. However, given his legal knowledge and the connections which he had in the Luton area, the Claimant decided to undertake legal work not requiring a regulated lawyer. He was able to make a very modest living by providing services which do not have to be undertaken by a Solicitors’ firm or a Licensed Conveyancer. By way of an example, he described how he could do preliminary work on behalf of a client who wished to pursue a property transaction more cheaply by undertaking such things as pre-contractual inquiries and searches. His client could then present the product of his work to someone who was permitted to conduct the regulated activities reserved to legal professionals, such as conveyancing.
7. The Claimant says that he also accepted the preliminary deposit of client monies into his business account. He explains that this was destined for onward transmission, for example, in the property transactions which his clients were later proposing to make. A relatively recent example given by the Claimant involved £80,000 passing through this account in 2020 to lawyers in South Africa for the purchase of a vineyard by one of his clients. He says that this use was envisaged and explained to the Abbey National when he opened the account; it was a feature of how he operated the account over the years; he kept his own records of whose money was whose; he was not aware of the Defendant’s General Terms and Conditions from time to time; they didn’t discuss with him the use of designated client accounts; and he didn’t know he couldn’t use the account for his own modest personal transactions as well.

8. Looking at the bank statements exhibited by the Defendant, but which only cover a recent period since October 2021, no very large sums were received into the account until, on 4 July 2022, a payment of £50,029.61 was received from Dubai from Inam Ullah Khashta Gul. Later, over a period of two weeks in October 2022, five large payments were received from 'PT Emerge Global Dynamics Graha Pena Lant' in Indonesia, together amounting to £369,941.15.
9. The Claimant's explanation for the July payment is that a client (Mr Gilani) who he had known and worked for over a period of almost 30 years, was trying to assist a Mr Hamadani who was in matrimonial and financial difficulties. The proposition put to the Claimant was that Mrs Gilani would buy Mr Hamadani's house, paying for it with a deposit and a buy-to-let mortgage, enabling Mrs Hamadani to remain in the house as a tenant. If in due course Mr Hamadani was in a position to buy the house back again from Mrs Gilani then he would be welcome to do so. However, Mr Hamadani had significant mortgage arrears and his mortgagees had applied for a warrant of eviction. Thus the payment of the deposit for the purchase became of critical importance so that the arrears could be discharged. Mr Gilani had travelled abroad to Dubai in early July but said he would send the deposit from there. When the credit arrived into his account on 4 July 2022 the Claimant says he decided to wait for Mr Gilani's return to England, because he did not know anything about the identity of the Mr Gul who had sent the money. Mr Gilani was to tell the Claimant in August that Mr Gul was a business associate, however, Mr Gilani had now discovered Mr Hamadani was facing a Crown Court trial for a mortgage fraud in respect of the mortgage on the property in question and so the transaction was not pursued.
10. That credit to the Claimant's account in July 2022 from Dubai had created an alert on one of the Defendant's monitoring systems and so they contacted the Claimant to discuss it. The Claimant says in his witness statement that it was not until mid-September 2022 that he received a series of urgent text messages, voicemails and letters about it. He says he was quizzed about the money and he answered the questions raised by the Defendant. The Claimant says that he was then told by Mr Hamadani in an email in late September that the Prosecution in the mortgage fraud case had obtained a Crown Court order preventing the sale of his house.
11. The Claimant's explanation for the October payments from Indonesia is that Mr Gilani had introduced him in the spring of 2022 to a Ukrainian refugee family (the Syeds) who were struggling in very poor housing. Mr Syed was a businessman who, prior to the Russian invasion of Ukraine, had been producing and selling sunflower oil and other foodstuffs. He transacted business in Dubai, as did Mr Gilani, and that is where they met. Mr Syed was also an associate of a director of a timber producer (PT Emerge Global Dynamics) based in Indonesia and that company was prepared to assist in the purchase of a house in Luton for Mr Syed and his family to live in. Discussions were at an early stage as to how this might be achieved, but in the meantime the Indonesian company transferred sums to the Claimant's account which was to be expended on the purchase of a £475,000 house for the Syeds.
12. Mr Lowe (the Defendant's Head of Investigations and Intelligence) has provided a witness statement in connection with this application in which he says that the Claimant's answers about the July payment did not satisfy employees of the Defendant as to its source and legitimacy and so the bank escalated the matter internally, broadening its investigations as it did so. This included examining further

credits to the account (in particular, the October payments) and the Claimant's background and history. These, he says, led the bank to suspect the payments related to fraud or another criminal act because of their origin, stated purpose and amount. Also he says, because of the Claimant's history of having been struck-off as a solicitor it gave them further cause to suspect the account was being misused and/or the payments related to fraud or another criminal act. In the light of what was reported to him, Mr Lowe concluded in early November 2022 that the account ought to be closed, but the £489,790.19 standing to the credit of the account would have to be paid-away before it could be closed. Therefore, the Defendant froze the account on 8 November 2022 because the money could not properly be paid to the Claimant without the bank being at risk of suffering penalties from its regulators and/or potentially being charged with complicity in criminal money laundering and/or facing claims for compensation from the lawful owners of the funds if the Claimant were to misapply them (since they were probably held on trust).

13. The Claimant discovered the account had been frozen on that same day in November 2022 and tried to find out why. He was told that it may have been frozen because someone else might have been trying to use it for an unlawful purpose, but apart from that he was 'stone-walled' in terms of any information. He tried again to find out at the end of November with no greater success. On 15 December 2022 the Defendant did finally write to the Claimant saying that it was unable to provide an explanation. I have little doubt that this was because the Defendant had made Suspicious Activity Reports to the National Crime Agency, since the domestic proceeds of crime and anti-money-laundering legislation would expose the Defendant to penalties if it were to have tipped-off the Claimant about the action it had taken.
14. In December the Claimant was served with a notice by his Regional Organized Crime Unit informing him that they would be applying to Luton Magistrates' Court for a six week freezing order over the account on 13 December 2022. Notwithstanding the Claimant's request for an adjournment of that application, for the police first to investigate his explanations of the legitimate property transactions associated with the credits, the application was pursued and an order granted.
15. The Magistrates' Court freezing order expired on 24 January 2023, following the refusal of an extension application on 20 January 2023 for a further six weeks, probably because of a technical error in the police application process. The Claimant says that he had hoped this would bring the freezing of his account to an end because he had expected the police and the bank to have been communicating with each other.
16. The last communication he had from the police was an email on 25 January 2023 (more than 10 months ago) in which they observed: "*...I also hope this experience had made you review your own practises and I hope you have learnt that you should consider what money laundering precautions you take before allowing large sums of money to be transferred into your account. This, along with having a proper audit trail for your transactions would perhaps stop this kind of thing happening in the future.*" The Claimant's hope was misplaced: the Defendant continued to freeze his account and this remains the case to this day. It is not possible to know whether or not the police are still investigating any of the monies in the Claimant's account.
17. The Claimant wrote again to the Defendant on 15 March 2023, observing that they had now had 4 months to complete due diligence checks since freezing his account.

He complained about the effects of the delays on him and his clients as well as about the lack of information. He asked for an update in 14 days and intimated he may have no alternative than contemplating the issue of legal proceedings for injunctive relief.

18. The Defendant's litigation team responded on 31 March 2023 stating the bank has legal and regulatory obligations which may require it to restrict access to accounts, pending further information being sought from a customer about funds held. The letter said they had questions as to the source and nature/purpose of the July and October payments and stated: "*...we do not believe that these queries have already been addressed in the context of the freezing order application. We....invite you to provide to Santander, within 7 days, an explanation (with proof) of the source of the funds and the nature and purpose of each of the individual credits.*" They expressly asked the Claimant to hold-off from issuing any proceedings, because they said it would be premature.
19. The Claimant responded the same day observing that this was the first time the bank had had any meaningful contact with him. He then set about explaining the history of the payments in a five page letter. Notably, however, no documentary support for his explanations was provided. He simply stated "[t]he documentation underlying these transactions is with Claire Howard [the police officer who had applied for the lapsed Magistrates' freezing order], if you can take the trouble to find it". The bank emailed him on 6 April to explain that the police had not provided the bank with any documentation concerning the Magistrates' freezing order proceedings. They continued "[t]hat being the case, we invite you to provide the bank with the documents you are referring to."
20. The Claimant did not do so, despite exchanging emails over the next fortnight with the Defendant about various complaints he had about their conduct. On 21 April 2023 the Claimant sent an email to the Defendant in which he said: "*Counsel has reminded me that I cannot simply send you the confidential documents that I gave the police without my clients' express written consent.*" He listed what he said he had given to the police at various dates; he said he had only that week received further contact from the clients; and he would give the bank a final opportunity to unfreeze the account by 28 April, failing which he would feel no alternative but to lodge a civil claim to include a claim for compensatory damages and costs.
21. Presumably he did not obtain his clients' express written consent to send confidential documents to satisfy the Defendant's requests for proof, because no documentary material or statements from his clients have ever been sent to the Defendant, nor has he included any such materials in his exhibits to this application.
22. With that background the Claimant drafted a Part 8 Claim on 21 July 2023 and an interim injunction application on 23 July 2023. They were lodged with the Court on 24 July but it is apparent from the court file that there were delays caused by a drafting error and omissions in fee remission documentation, together with Court delays in responding to him. It was not issued until 4 October and then served on 30 October for the on-notice hearing of 7 November.
23. The Claim Form does not disclose the cause of action upon which the Claimant seeks to found his claim. Orally before me he surmised that it was founded on a breach of contract because the Defendant is refusing to act upon his instructions. An

amendment of pleadings will be necessary to rectify this omission.

The Claimant's submissions

24. Beyond what I have set out above, the Claimant says that there is no justifiable basis for the Defendant refusing to act upon his instructions. He has entirely legitimate obligations to fulfil on behalf of clients which the Defendant has frustrated without a proper foundation for refusal. He co-operated fully with the police interventions and their freezing order expired over nine months ago. The Defendant took months to engage with him at all, despite his concerted efforts, and he has provided a consistent and detailed explanation to them.
25. By contrast, he says the bank has hardly lifted a finger to investigate the transactions in question. He says that he now has to return the credits in question to their sources, because the delay of more than 12 months has frustrated his clients' objectives. He claims to have contacted the foreign banks from whose client accounts the sums were paid and that those banks have informed him they have heard nothing at all from the Defendant in respect of these transactions. The Defendant has refused to countenance repaying those sums to their source, notwithstanding that the Claimant argues this would negate the Defendant's concern about the bank being potentially sued for knowingly assisting a breach of trust by him misapplying the monies.
26. In answer to the Defendant's argument that he has delayed pursuing an interim injunction so there can be no urgent need for one, he observes that he exercised patience to give the bank sufficient time to make such investigations as it may have needed. Further, the Defendant expressly asked him to hold-off issuing proceedings in its letter of 31 March 2023 - he did so. Furthermore, having given the bank even more time to investigate and provide a proper explanation of their refusal to unfreeze the account, it was not until service of the statement of Mr Lowe - on the day before this hearing - that the Defendant referred to clauses of their General Terms and Conditions for the very first time to seek to justify their conduct. Only now has the Claimant really begun to be told what the Defendant's position is. If he had not initiated these proceedings he would still have been left completely in the dark. As it is, he submits, the bank apparently now wants to continue to do nothing more for an indefinite further period. He argues that it is urgent because he is being hounded by his former clients, he has lost other clients and he is suffering ongoing reputational damage. He has brought his Claim under Part 8 because he asserts there is no substantial factual dispute and he considers that a speedier resolution is required than would be the case using a Part 7 action.

The Defendant's submissions

27. It submits this case is not one of urgency demanding the court's intervention by way of an interim injunction and argues that, had it been so, the Claimant would and should have brought the application sooner.
28. The Defendant's General Terms and Conditions (which applied from April 2022 to December 2022) state in Clause 8.6:
"We can refuse any withdrawal or payment from your account if: ...
(d) it may place us in breach of any legislation or law or we reasonably suspect that

it may result in any regulatory action against us in any jurisdiction;
(e) we reasonably suspect it relates to fraud or any other criminal act;
(f) you are in breach of any of these Conditions or the Specific Conditions...”
and in Clause 19.3:
“It is a condition that you do not: ...
(c) misuse your account;
(e) act in any way to give rise to reasonable suspicion of fraud or other criminal activities...
And if any of the above applies, you will be in breach of these Conditions and we can suspend or close your account immediately without prior notice...”

29. Those contractual terms were repeated in subsequent amendments but then substantially amended from July 2023. The Defendant argues that it has an even more clear basis for declining to follow the Claimant’s instructions since this latest revision of their General Terms imposed on its customers. These include Clause 5:

“...It may cause us to break or not follow any law, regulation, court order, code or other duty that applies to us ...
“We...could face action or censure by a regulator, government or law enforcement body in any jurisdiction...
“The payment may be connected to...fraud or any other criminal activity...
“We’re acting reasonably to protect against or reduce the risk of...fraud or other criminal activity...
“Someone else may have rights over the money in your account.
“You haven’t acted in the way you agreed in these terms, either on more than one occasion or in a serious way. For example, if you don’t provide us with information we’ve reasonably asked for on more than one occasion.”

The Defendant has also now imposed similar wording in clauses justifying them blocking access to a customer’s account and closing an account without telling its customer first. It will be a question for trial as to whether the bank is entitled to rely on these more recent terms.

30. The Defendant argues that it was contractually entitled to act as it did because it had reasonably requested information from the Claimant as to the legitimacy of the sources of the monies, which he did not provide; also, allowing the Claimant to re-direct monies away from the account may have placed it in breach of legislation; also, it reasonably suspected that if it were to follow his instructions it may render them open to regulatory action; also, it reasonably suspected fraud or criminal activity; also, the Claimant had acted in a way which gave rise to such a reasonable suspicion; and, he had misused his account.
31. Relying on caselaw of a situation analogous to the present case - *Becker & Fellowes v Lloyds TSB Bank PLC* [2013] EWHC 3000 and the relevant authorities which are helpfully gathered and considered in *Hmicho v Barclays Bank PLC* [2015] EWHC 1757, the Defendant makes the following propositions.
32. It is highly inappropriate for a mandatory injunction to be granted which would render a bank at risk of committing a criminal offence, thus an injunction should be refused as a matter of discretion (*K Ltd v National Westminster Bank PLC* [2007] 1 WLR 311 @ [12]). Further, a bank must be entitled to rely on its contractual rights to refuse to carry out a transaction if it reasonably thinks that one or more of its conditions to do

so is satisfied (*Becker & Fellowes v Lloyds TSB Bank PLC* [2013] EWHC 3000 @ [24]). For an interim mandatory injunction to be granted, which would have the practical effect of putting an end to the action, a court is required to factor-in the degree of likelihood of the Claimant succeeding in the action if it had gone to trial (*NWL Ltd v Woods* [1979] 1 WLR 1294 @ 1307A-B). For a mandatory injunction a court must feel a high degree of assurance that at trial it will appear that the injunction was rightly granted - a higher standard than for a prohibitory injunction (*Shepherd Holmes Ltd v Sandham* [1971] 1 Ch 340 @ 351H-352A). An application for an interlocutory mandatory injunction should be approached with caution and the relief granted only in a clear case (*Locabail International Finance Ltd v Agroexport* [1986] 1 WLR 657 @ 663G-664D).

Conclusions

33. There is plainly a serious issue to be tried – namely whether the Defendant had, and now continues to have, a contractual right to decline to execute the Claimant’s instructions to make payments out of the account and to accept the return of a payment from an account in South Africa. That is not something that is suitable for CPR Part 8 procedures and this case must, therefore, be re-allocated to follow CPR Part 7 procedures.
34. I reject the Defendant’s suggestion that this application should be refused because it is not an urgent matter and the Claimant has delayed seeking an injunction. It is a bad point and it ill-behoves the bank to make it, because it is unquestionably the case that in large part they have contributed to the enormous frustrations of the Claimant. The Claimant makes the perfectly legitimate points that if he had not brought this claim he would probably have heard nothing more from the bank. He has only begun to find out for the first time what the bank’s reasoning is as a result of reading the witness statement of Mr Lowe, which was only served on the day before the hearing, and a whole year after he froze the account. Not once before this was anything said by the Defendant to the Claimant in correspondence about relying upon its General Terms and Conditions. Whilst banks may find themselves in a difficult position when there may be ongoing police inquiries which they cannot reveal under criminal legislation, there can be no reason not to explain any contractual reasons for their conduct. How is a Claimant to know when to time such an application as this, having faced the difficulties he has had with getting engagement from the bank? Of course it is urgent to him and the delays are in large part not of his making.
35. However, I am not at all satisfied that this is a case in which an interlocutory mandatory injunction should be granted because I do not feel a high degree of assurance that the Claimant will succeed in satisfying a court at trial that the Defendant has not been exercising its contractual rights under its 2022 General Terms and Conditions to freeze the account, to close it and to decline to execute the Claimant’s instructions. This is most particularly because of the lack of any documentary evidential support provided by the Claimant to the Defendant (or even now to this court) which provides any assurance that the deposited monies are not the proceeds of crime and that the proposed property transactions are not an attempt to money-launder them. None of the Claimant’s own explanations satisfactorily deals with the legitimacy of the source of the monies, still less has he provided any evidential support for it. (The Defendant will in due course have to substantiate how

the July 2023 revisions to its General Terms and Conditions were ever agreed by the Claimant and how they can retrospectively affect the position once Mr Lowe had already chosen to close the account in November 2022.)

36. If I were to grant the injunction and at trial it proved that I was wrong to do so, then damages would be an inadequate remedy for the Defendant because it may face regulatory and/or criminal sanctions and/or potential actions from third parties who might claim the funds were misapplied. The Claimant is not someone who would have the resources to meet those damages. The Claimant's limited means are such that a cross-undertaking in damages would not be of any value. By contrast, if the Claimant has a good case then the Defendant is able to pay damages and consequential damages if they are claimed.
37. The balance of convenience favours the maintenance of the status quo at this stage. How long that will remain depends upon the efforts made to substantiate the legitimacy of the source of the deposited monies.
38. A court should be cautious in granting the discretionary remedy of an interim mandatory injunction in anything other than a clear cut case. I do not find myself able to conclude that I have the necessary high degree of assurance that this is such a case.
39. Accordingly, I refuse the application for an interim mandatory injunction.

Costs

40. The Defendant seeks a costs order in its favour against the Claimant. It applies for the sum of £33,871.90 to be paid within 14 days. I have now received written submissions from both parties in respect of the matter of costs.
41. The Defendant's lateness in supplying a schedule of costs has caused the Claimant no real prejudice, it does not disentitle the Defendant to a costs order and I shall summarily assess costs without regard to when it was served – it is a mere technicality given that I have written submissions from both parties.
42. The Claimant has not succeeded in his application and I consider that the Defendant is therefore entitled to an order for costs in successfully responding to this application. I approach the summary assessment of the Defendant's costs on the Standard Basis in line with CPR Part 44.3 and the factors set out in CPR Part 44.4, only allowing costs which have been reasonably incurred and which are proportionate to the matters in issue.
43. The letters and email costs are reasonably incurred and proportionate, as is the attendance at the hearing.
The Schedule of work done on documents contains items which in my judgment are not proportionate, albeit that the items are reasonably incurred. I disallow 1 hour of the claim for considering what was a very short Pt 8 Claim and injunction application (£320); I disallow the Grade C work for Mr Unger's 2 page witness statement, for which only his work is proportionate (£286); I disallow 2 hours 12 minutes of the Grade B work on preparing Mr Lowe's statement (£704) because half an hour per page is proportionate; I disallow 4½ hours of the Grade B work for preparing for the hearing (£1,440) because in reality this was what counsel was instructed to do. This

reduces that element of the claim by £2,750 down to a total of £4,429.

Counsel's fees are disproportionate at £10,000 for advice/conference/ documents and then a further £10,000 in preparation for and presentation of what was listed for a 1 hour hearing (albeit that it lasted a half day). A proportionate figure for advice/conference/documents is £4,000 and £3,500 for the hearing.

44. Accordingly, the total summarily assessed costs I order to be paid by the Claimant to the Defendant comprises Solicitors costs of £5,955 net of VAT and Counsel's fees of £7,500 net of VAT, on which I am told 90% of the VAT has to be paid by the Defendant (£2,429.10). Stepping back and considering the matter as a whole I am entirely satisfied that the resulting grand total of £15,884.10 properly reflects sums which have been reasonably incurred and which are proportionate. The Claimant may have 28 days in which to make payment.