



Neutral Citation Number: [2024] EWHC 311 (KB)

Case No: KB-2024-000384

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**COURT 37 (IN PUBLIC)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Wednesday, 14<sup>th</sup> February 2024

**Before:**  
**FORDHAM J**

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**Between:**  
**ALEXANDER KUZNETSOV** **Claimant**  
**- and -**  
**(1) WAR GROUP LTD**  
**(2) BARHAM PROPERTY LTD** **Defendants**

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**The Claimant in person**  
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Hearing date: 14.2.24

Judgment as delivered in open court at the hearing

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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

## **FORDHAM J:**

### Order

1. I am making the following Order: (1) The Application is adjourned to Friday, 16 February 2024, not before 10:30am in Court 37 before me, on notice to the Defendants. (2) The Defendants – or either of them – may respond, through their solicitors: (a) with any written submissions by 4pm Thursday 15 February 2024; (b) to request a remote hearing by MS Teams or by telephone. (3) The Claimant shall as soon as practicable serve the Order and this judgment on the solicitors for the Defendants GLS Solicitors [email address given]. (4) The Court is to be kept informed if there are any developments. (5) In addition to communicating with the Court, the parties shall copy in the Judge’s clerk [email address given].

### The Application, Documents and Service

2. The case has come before me today as a “without notice” application. The Claimant had filled out his application notice yesterday, 13 February 2024. The notice recorded that the Defendants “should be served” with the application. He told me that he was concerned about delay unless any service were by email. The documents were materially incomplete, which has delayed us this afternoon, but further documents had been emailed and I have been able to consider them. They include (a) an undated letter before claim sent to both Defendants (presumably by post since the Claimant tells me he does not have email addresses for them) and (b) the Common Auction Conditions for Real Estate Auctions (edition 4.0), which the Claimant tells me are “the Conditions of Sale as defined on the website of BP Auctions”, as described in two documents headed “Sales Memorandum”, one in respect of each of the Defendants. I have seen the email chain of what the Claimant says are unanswered emails to the GLS Solicitors email address given in those two Sales Memorandum documents (I have used the same email address within my Order, at paragraph (3)). Any Court will be concerned about being asked to make Court Orders in a case involving parties who are not before the Court, and who have not specifically been told that the application for the Orders is being made. The application documents were not sent to the GLS Solicitors email address until after I raised this, earlier this afternoon. I am told by the Claimant that he sent the papers by email at 14:59 and that he has received neither a response nor any ‘bounceback’ email. It is now 17:04.

### The Claimant’s Position

3. I am conscious that I have only heard one side of the story, but I have seen the documents and have been able to appreciate what the Claimant is telling me, from his perspective. That picture is as follows. At an auction on 24 January 2024, the Claimant successfully bid for two properties one being sold by each of the two Defendants. The Sales Memorandum documents, to which I have referred, each record the lot addresses; there are then signatures by the agents for the seller and buyer; then GLS Solicitors are named in each document as the seller’s solicitor (with the email address to which I have referred). Also recorded are the paid deposit, the buyer’s administration fee, and the sale price. From that it can be seen what balance was to be payable. Each Sales Memorandum gives an “exchange date” of 24 January 2024. As to the “completion date” it states: “refer to contract”. The Claimant has been ready, willing and able to pay each balance, so that each sale can go through to exchange and completion. He has shown me BP Auctions website screenshots which refer to “28 day completion”. His position is that he accepts that he is required to pay the balance,

and to submit a “draft transfer” to the seller at least 10 business days before the agreed completion date (Condition G5.1(a)), which the seller must approve or revise within 5 business days (G5.1(b)). The Conditions describe the “contract date” by reference to the “date of auction” unless certain other circumstances apply. The “agreed completion date” is described as the date specified in the special conditions or, if no date is specified, “20 business days after the contract date”. The unanswered emails sent to the GLS Solicitors email address given on the Sales Memorandum Documents have been seeking bank details, in order to effect transfers; and have been providing the necessary “draft transfer”, said to be “in accordance with the common auction conditions”. I have seen unanswered emails on a range of dates.

4. The Claimant is concerned that the transactions should proceed through to completion and the two properties be transferred. He is concerned, lest it be alleged that there has been some default on his side of the fence, and he is concerned to demonstrate the absence of any such default. He is anxious at any prospect that these transactions should falter. He has transferred and committed substantial deposits but his principal concern at this stage is not simply with those deposits being secure, but rather with the transactions continuing through to completion in accordance with his legal rights. The Claimant comes before this Court today, as a matter of urgency, with a view to his securing the position – as best he is able – well ahead of the 28 days (or 20 business days) from 24 January 2024; that is to say well ahead of 21 February 2024. And he has drawn attention to the other steps that would be needed to take transactions through to completion finalising what he describes as the technicalities.

#### Some Other Conditions

5. In being able to look today at some of the standard terms and conditions I have noted at Condition G7.1 what appears to be a right, afforded to the buyer, “on or after the agreed completion date but before completion” to “give ... notice” to the seller “to complete within 10 business days ... making time of the essence”. And I have noted G7.4 which appears to say that if a seller fails to comply with such a notice, the buyer can terminate the contract and recover the deposit with any applicable interest, but “without affecting any other remedy the buyer has”. The Claimant says that he would or should be entitled in law to a “remedy” of specific performance of each sale. That cannot be a matter for me to determine today, on a “without notice” application. Nor is the Claimant asking me, today, to make an order for specific performance.

#### The Draft Order

6. The draft Order which the Claimant has put before the Court asks me: (a) to order that the Claimant may pay the balance of the property purchase prices by depositing funds with a notary or solicitor of his own choice; (b) to declare that upon doing so the Claimant would have discharged all obligations to each Defendant; (c) to order that, unless the Defendants deliver transfer documents needed for the property transfer and registration with the Land Registry, and providing the Claimant access to each property, each of them be liable to make damages payments of £250 a day (or some other sum); and (d) to order the Defendants to pay the Claimant’s legal costs.

#### Adjournment

7. As I said at the start of this judgment, I am not prepared today – and on a “without notice” application – to do more than give directions, adjourning this case for further consideration

**FORDHAM J**  
**Approved Judgment**

on Friday, if pursued. I am entirely satisfied in all the circumstances that the deferral for those two days is necessary in the interests of justice, and proportionate, promoting procedural fairness and an informed Court. I have reached no view as to what – if any – order may be appropriate. I will be able to revisit all aspects of this case on Friday, unless the matter resolves in the meantime. As I recorded at the outset, I have made provision which would allow for Friday’s reconvened hearing to be a “remote hearing”, by MS Teams or telephone.

14.2.24