Neutral Citation Number: [2024] EWHC 328 (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

Friday, 16th February 2024

Before:
FORDHAM J

- -

Between:

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

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- -

The **Claimant in person**
The **Defendants** did not appear and were not represented

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Hearing date: 16.2.24

Judgment as delivered in open court at the hearing

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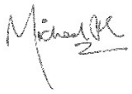
Approved Second Judgment

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:

Previously in this Case

1. This judgment is the sequel to [2024] EWHC 311 (KB), which I will call the "First Judgment". As I explained in the First Judgment, the Claimant came before me two days ago in Court 37 with a "without notice" application. He wanted me to make orders as to how property transactions should proceed, including a declaration that he had discharged all obligations by depositing funds in a particular way, and daily penalties against the Defendants for failing to provide documents, together with an order for costs (First Judgment §6). He had not notified the solicitors for the Defendants, which I raised with him when the case first came on at 2pm. He eventually sent them an email at 14:59, the hearing resumed later and I gave judgment at 17:04 (see First Judgment §2). He provided me with an undated "letter before claim" written to the Defendants, and with the General Conditions of Sale that he said were applicable. Neither of those had been in his papers before the Court (First Judgment §2).

2. The Claimant had exhibited a set of emails between himself and GLS Solicitors, to the email address contained for them in two Sales Memorandum documents that he produced. I described these emails as "the email chain of what the Claimant says are unanswered emails to the GLS Solicitors email address given in those two Sales Memorandum documents" and I said: "having heard only one side of the story, based on what the Claimant was telling me from his perspective, these were unanswered emails sent that email address", with those "unanswered emails on a range of dates" (First Judgment §§2 and 3).

3. As I explained on Wednesday, I was not prepared to make any Order beyond adjourning the case, requiring notice and service, and giving GLS Solicitors an opportunity to respond if they wished to do so, and to attend today if they wished to do so. I said I was entirely satisfied in all the circumstances that that deferral, with those directions, was "necessary in the interests of justice, and proportionate, promoting procedural fairness and an informed court" (First Judgment §7). I said that any Court would be concerned about being asked to make orders in a case, involving parties who were not before the Court, and who had not specifically been told that the application for the Orders was being made (First Judgment §2). This case has become a textbook example of why all of that is so very important. I am very glad that I took the course that I did.

4. The story that had been presented to me, based on the documents which I was given on Wednesday, was one of a buyer – the Claimant – seeking to effect the completion of two sales transactions, and the firm of sellers' solicitors named in the sales documents who had been wholly unresponsive; the Claimant had been trying to get the documents finalised; and had been trying to make the payments in good time; with the email chain which the Claimant was presenting as "unanswered emails". I even checked with him, when I saw the letter before claim, that what he meant by the phrase "your solicitor has vehemently refused to provide the required details necessary" was a reference to the absence of a response.

GLS Solicitors' Response

5. Having been served with Wednesday's order and the First Judgment, GLS Solicitors took the opportunity which I had afforded to them and provided a letter to the Court yesterday

with a set of accompanying documents. They have explained that they have no instructions on behalf the Defendants to act in any civil proceedings; nor any instructions to attend this hearing; but they wanted the correspondence and documents to be placed on the court file and considered. They have made a number of points in their letter to explain relevant circumstances from their perspective.

6. It transpires that the Claimant had provided the Court only with some of the email traffic, and only with emails which he had sent. Those emails appeared as a series of unanswered communications beginning at 22:01 on 30 January 2024, through to 22:38 on 6 February 2024. That series of emails was being relied on by the Claimant, when making his contention that GLS Solicitors had been refusing to provide the requested documents and information, and had failed when asked to do so. The reason, said the Claimant, for that failure or refusal appeared to be deliberate, with the intention to preclude him from completion, with the outcome of the Defendants keeping the properties and possibly retaining the deposits.

7. GLS Solicitors say this in their letter:

> ***the Claimant has asserted that he has had no communication from ourselves which is incorrect and we have attached to this letter the various emails sent to the Claimant pertaining to these matters.***

They also point out that the Claimant had quoted to the Court the General Conditions of Sale but there are, they say, Special Conditions in the contract agreements. These Special Conditions have also been provided and they bear the same signature, on the buyer's side, as did the Sales Memorandum documents which the Claimant showed me on Wednesday.

8. What the fuller picture of email traffic shows includes the following:

   i) The Claimant in fact bid for three properties at the auction; not the two that he told me about. There are emails relating to the three properties. GLS Solicitors where the named seller's solicitors for all three.

   ii) An email from the Claimant on 29 January 2024 at 13:22 to GLS solicitors, relating to that third property, is in materially identical terms to the email of 30 January 2024 at 22:01, which I was shown relating to one of the two properties that the Claimant was telling me about. The Claimant said – in each of those emails – that he won the auction and that the parties needed to proceed to completion of the paperwork and he asked for land registration documents and account details for paying the balance of the purchase price. That means he was asking about account details back on 29 January 2024.

   iii) The Claimant received a response by email from GLS Solicitors (29 January 2024 17:14), copying in the auctioneers BP Auctions. GLS Solicitors said: "We are unable to deal with any unrepresented party therefore we suggest you instruct solicitors on your behalf and … they get in touch with us to proceed with matters further".

   iv) There was then a whole series of email exchanges involving the Claimant, GLS Solicitors and BP Auctions. The Claimant was contesting the legal basis for any insistence that he have a solicitor. He was doing that from 29 January 2024 at 17:31 onwards.

v) The Claimant received, on 30 January 2024 at 08:56 from GLS Solicitors a clear description of their position: that they were not acting for any unrepresented buyer; that they were not obliged to carry out any work "for a buyer who deems that they do not need to instruct [a] solicitor"; that the Claimant is well versed in property transactions and aware of the onus on solicitors to undertake identity and money-laundering checks. GLS Solicitors reiterated that the Claimant should take independent advice, warning that his failure to do so would affect the transactions, given that he was aware of the timescale for completion. They explained that they were not obliged to correspond with any buyer direct and that he should appoint a solicitor. That position was reiterated at 10:43 that day by GLS Solicitors. It was met with an 11:30 email from the Claimant threatening to go to the High Court.

vi) At 11:46 on 30 January 2024, BP Auctions sent an email to the Claimant and to GLS Solicitors, recording BP Auctions' position: that the sellers were not in breach of anything; and that the Claimant had 28 days to complete. They added that they could refer the Claimant to a solicitor who could progress this through to completion; that they had sold hundreds of properties; that getting a solicitor to complete matters was not difficult or expensive; that the seller's solicitors had stated the position clearly; and that they (BP Auctions) had duty solicitors who could assist the Claimant.

vii) That was reiterated at 11:55 in an email which said that BP Auctions had spoken to the seller, that the seller's solicitors were appointed and ready to complete; that the seller had full authority and intention to sell; and asking the Claimant "why don't you appoint a solicitor and get this done?", offering to refer him to two on their panel of solicitors who would be able to assist him.

viii) All of those emails, on the picture as it now is, preceded the undated letter before claim that I was shown on Wednesday. It appears that that letter was itself sent to GLS Solicitors by the Claimant, by email. There is undoubtedly an email, in the materials provided by GLS Solicitors, which is from the Claimant to them and attaches a letter before claim. It is headed "Pre-Action Letter" in its subject line. It was 30 January 2024 at 21:48.

ix) There is also an email in the documents provided by GLS Solicitors, which post-dates the first of the emails which the Claimant had included in his exhibits for Wednesday. It came from GLS Solicitors on 31 January 2024 at 08:34. It stated that GLS Solicitors had already informed the Claimant that they were unable to do with him direct; that he should appoint solicitors to deal with the transaction to avoid breach of contract and all matters for failure to complete; that they were solicitors acting for the sellers are not able to advise him; that the sellers were able and willing to complete and any completion documentation would only be forwarded to any appointed solicitors; that the Claimant had not complied with current identity and anti-money laundering; that BP Auctions had advised that they could recommend a solicitor to act for the Claimant; or that alternatively he could find any other solicitor that he wished.

Implications

9. This picture has a number of troubling implications:

i) First, the Claimant was presenting – at Wednesday's hearing – a set of emails from him, as being unanswered and chased, presenting a picture of non-responsiveness from GLS Solicitors.

ii) Secondly, he had chosen to start his exhibited email chain with the 30 January 2024 email of 22:01. He had not included in the papers before the Court any of the earlier emails.

iii) Thirdly, he did not even include the email the letter before claim response (31 January 2024 at 08:34), which post-dated the first of the emails which he did exhibit.

iv) Fourthly, he did not refer to that letter of claim response even when he produced, following a question from me, a copy of his letters before claim to the Defendants. The Claimant has insisted today that the letter before claim was that was attached to the 30 January 2024 email of 21:48, and which precipitated that response (31 January 2024 at 08:34) was a letter before claim relating to the third property transaction, the one he had not informed the Court about, in respect of which he was not seeking any order. I have no evidence before me to support that assertion. But, even on that basis, the overlap in terms of the transactions and the position that arose was, and is, in any event obvious.

v) Fifthly, the Claimant made no mention of the fact that the first emailed request which he exhibited from 30 January 2024 at 22:01 was materially identical to an earlier email relating to that other third property, which had received a response.

vi) Sixthly, the Claimant did not make any mention, in any of his papers, to the point that had consistently been raised: namely, that he needed to instruct solicitors, a point which had been made from at least 29 January 2024; and which was directly relevant to understanding the true picture. That raising of that point had, as I have explained, been more than two weeks before the Claimant came before me describing his predicament and the urgency of his situation.

vii) Seventhly, the Claimant made no mention of the communications that he had received from BP Auctions.

viii) Eighthly, he did not bring to my attention Special Conditions in the contract agreement, but produced when I asked him the General Terms and Conditions.

ix) Ninthly, he did not bring to my attention that there is a reason why later emails were not being responded to, namely that GLS Solicitors and BP Auctions had make the position clear from their perspective; and GLS Solicitors had specifically stated more than once that they did not intend to communicate directly with an unrepresented individual buyer.

10. That was the fuller and truer picture as it stood when the application to the High Court on Wednesday without notifying GLS Solicitors was pursued, to try and get court orders which would mandate a position relating to the completion of the sales transactions.

11. It is obvious from this picture that the court now has, that the Claimant knew and knows perfectly well what the impediment was and is, and how he needed to and still needs to

deal with it. It has been open to him to take that course. He is known that for more than two weeks and it has been repeatedly reiterated.

Legal Merits of an Interim Order

12. GLS Solicitors have drawn attention to a provision in the Special Conditions of sale which includes this:

> ***… all monies due to the seller under this contract must be remitted from a solicitors or licensed conveyancers client account.***

When I asked about it, the Claimant argued: (i) that those Special Conditions were not applicable; (ii) that it was not his signature on the document; (iii) that the provision was concerned only with a situation arising if monies are not forthcoming from a "regulated financial institution" (as described in the opening words of the provision); (iv) that he is ready to transfer from such an institution; and (v) that his deposits have been received and retained.

13. In further materials filed for today, and in points repeated orally, the Claimant has sought to persuade me that it is clear that the option of "DIY conveyancing" was an applicable legal entitlement, which he was entitled to adopt as a way forward, in the context of the completion of these auction sales. I record that his latest witness statement does not address the question of disclosure; nor why this known contested point, about his having a solicitor or not, was not identified and addressed when the "without notice" application was made two days ago.

14. Remedies are being sought (First Judgment §6) which are intended to dictate the position relating to completion of property transactions, within days. It is obvious that no hearing could take place for any substantive determination on the legal merits, before that time has passed. That justifies the Court in asking whether there is some "high degree of assurance", whether a claim is "likely to succeed", or at least in making "some assessment of the legal merits"; rather than asking the 'serious issue to be tried' question. However, I would not even have been satisfied on the lower threshold of 'serious issue to be tried'; still less taking a more exacting approach. In any event, I do not regard damages as an adequate remedy for the Defendants if I made orders which turned out not to reflect the true legal position. Next, and again in any event, I do think the damages would be an adequate remedy for the Claimant, if the legal rights which he claims are well-founded in law. I posit there being some private law right and remedy open to the Claimant, based on being put to the unnecessary expense of instructing a solicitor to complete a property transaction, and based on arguments about the true meaning and effect of legally applicable contract terms or any other legal source. I can see no reason why that private law right and remedy – if it exists and if that position is well-founded – would not sound in damages and thus adequately protect the Claimant. If there is no private law right and remedy, and if that is not well-founded, the claim would fail anyway. Further, the balance of convenience and justice in the circumstances of this case decisively comes down against the grant of any order. The order for interim relief that is being sought involves the Court designing and imposing a mechanism, cutting across the contractual framework and express terms. That in my judgment would not in any event be a justified course. For all of these reasons, I would dismiss the application, even had the fuller papers been put before the Court as they should have been.

Non-Disclosure

15. But there is another independent reason why I dismiss this application. There has been a plain and obvious material non-disclosure in making a "without notice" application.

16. There is an important resource which is available in the public domain and freely accessible. It is the annual King's Bench Guide to the Working Practices of the King's Bench Division. It has a section on "litigants in person" and the standards which are required of them (§2.1). That section sets out the duty of all parties to litigation, whether represented or not, to bring relevant matters to the attention of the court and not to mislead the court (§2.6). It then says this (§2.7):

> ***In addition, there is a particular duty when an application is made to the court without the other party being present (for example in the case of urgency or when seeing a judge at an 'Application without Notice'). Here the litigant is under a duty to disclose any facts or other matters (including arguments of fact or of law) which might be relevant to the court decision, even if adverse to their case, and specifically draw the court's attention to such matters.***

17. I do not need to repeat the observations which I have made about the misleading nature of the materials and the story, presented from the Claimant's perspective, that I was describing in the First Judgment.

18. The duty of full and frank disclosure is fundamental. It is also obvious. The Claimant, moreover, does not present as naïve, either in the email exchanges that I have now seen fully; nor in his court documents; nor in his written and oral submissions. He would be able readily to test it: would he not be outraged if the other parties to transactions came before a court, without any reference to him, presenting a very selectively produced set of materials, to try get court orders to permit a course or to mandate it? You do not need to be a lawyer to understand the need for a judge to be given a full and fair picture, and the need for basic fairness. These are obvious, basic expectations of anyone who comes into contact with legal proceedings, which operate to try to achieve justice, in the public interest.

19. The fact is that the Claimant could perfectly well have notified GLS Solicitors when he drafted his application on 13 February 2024 and decided to come to Court with it on 14 February 2024. His explanation given to me about only having postal addresses for the Defendants was itself misleading, since the letters before claim, addressed to the Defendants, could perfectly well be emailed by the Claimant to GLS Solicitors back on 30 January 2024, and elicit a response. I have described the email which attached a letter before claim and was sent to GLS solicitors and did elicit a response.

20. The Claimant made a conscious decision, when coming to the Court, about what emails to put before the Court and what emails not to include for the Court. He made a conscious decision not to make any mention the fact that what was being said was that he needed to instruct solicitors, an issue which he has only now addressed in papers filed overnight for this morning. He knew – more than two weeks before he came to this Court – that if he instructed a solicitor to deal with the payment, the Defendants and their solicitors were ready willing and able speedily to complete, within the time frame that he came before me to emphasise. Ironically, the main order he sought was that he should be able to use a solicitor, and pay money into a chosen solicitor's account (First Judgment §6(a)). He knew the fuller picture. But he chose not to tell the Court about it. He would have been obtaining an Order, without any ventilation of the point that had been raised against him, because he did not tell the Court what it was and that it had been raised. In my judgment,

the withholding of documents and information was serious and significant. For that independent reason, I would have been – and am – dismissing this application today.

16.2.24