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IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
[2019] EWHC 566 (Ch)



No.CH-2018-000229

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, EC4A 1NL
Wednesday, 20 February 2019

Before:

MRS JUSTICE FALK

B E T W E E N :

(1) PHILLIP GREGORY
(2) WILLIAM WILKINS

Claimants

- and -

(1) JULIANNA MOORE
(2) IRENE PRING
(3) SHAUGHAN PRING

First Defendant

Second and Third
Defendants/Appellants

THE CLAIMANTS did not appear and were not represented.

MR J. McLINDEN QC (instructed by JFS Cabot, Solicitors) appeared on behalf of the first Defendant.

MR L. BLOHM QC (instructed by Stephens Scown LLP, Exeter) appeared on behalf of the second and third Defendants.

J U D G M E N T

MRS JUSTICE FALK:

- 1 This is an appeal by the second and third defendants against part of an order made by Chief Master Marsh on 3 August 2018, following a case management conference. The part appealed against is an order that one paragraph and certain words in the following paragraph be struck out from points of claim served by the second and third defendants.
- 2 Certain other paragraphs and parts of the prayer for relief were also struck out but there is no appeal against those aspects.
- 3 The Chief Master subsequently issued a reserved judgment giving reasons for the striking out and for refusing permission to appeal.

Background

- 4 By way of background, the claim relates to the estate of Barry Pring. The first defendant had married Mr Pring about a year before his death. The second and third defendants are Mr Pring's mother and brother.
- 5 Mr Pring died in the Ukraine in February 2008, having been struck by a vehicle travelling at speed whilst he was standing on the hard shoulder of a motorway. The vehicle did not stop, and the identity of the driver is not known.
- 6 Mr Pring died intestate and had no children. He was survived by his parents and brother. His father has since died, and his mother and brother are the executors of his father's estate.
- 7 The claimants, who are partners in Stephens Scown LLP, hold letters of administration in respect of the deceased's estate, and their interest in the proceedings is limited. They were not represented before me.
- 8 Mr Pring's mother and brother believe that the first defendant was implicated in Mr Pring's death. A verdict of unlawful killing was recorded at an inquest held in the UK in 2017, but that verdict has been overturned and a fresh inquest is due to be heard, I understand, in the summer of this year. No criminal charges have been brought in the Ukraine.
- 9 Section 1 of the Forfeiture Act 1982 refers to the "forfeiture rule", being:

"... the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing".
- 10 By virtue of sub-section (2):

"... a person who has unlawfully aided, abetted, counselled or procured the death",

is treated as having unlawfully killed the deceased.
- 11 If the second and third defendants are right, the first defendant may therefore be precluded from claiming any interest in Mr Pring's English estate.
- 12 The claim was first commenced in 2008. It is not necessary to go into details about much of the history, but for a long period the issue of forfeiture was effectively deferred.

- 13 In August 2017 the first defendant applied for an order that the forfeiture issue should be delayed no longer. This application was opposed by the other defendants, but Deputy Master Lloyd decided in December 2017 that it was time for “the brake to come off” (in his words) and ordered the second and third defendants to serve points of claim on the question of whether Mr Pring was unlawfully killed.
- 14 Deputy Master Lloyd’s order, dated 5 December 2017, required the claim to be fully particularised. It also provided for the first defendant to serve points of defence.
- 15 Points of claim and defence were provided, but the first defendant declined to plead to certain paragraphs of the points of claim, including the paragraphs the subject of this appeal, on the basis that they were outwith the terms of Deputy Master Lloyd’s order.
- 16 This led to an application by the second and third defendants seeking permission, if required, to bring those parts of the claim to which objection had been made and requiring the first defendant to plead them.
- 17 The matter came before Chief Master Marsh for a case management hearing, at which certain parts of the points of claim were struck out. Certain other amendments were permitted and case management directions were made.
- 18 The strike-outs that are the subject of this appeal relate to paragraphs 8 (17) and (18) of the points of claim. It is worth reading these out in full:
- “(17) In September 2008, the first defendant applied to the court in Kiev, claiming full ownership of the Geroiv Stalingradu Prospect apartment. She falsely informed the judge that she had bought the apartment with her own personal money and was entitled to full ownership of it. She subsequently withdrew her claim.
- (18) In truth, the first defendant married the deceased for his money, took advantage of him financially when they were married, and caused his death to rid herself of him and for her own financial benefit when it was likely that the marriage would otherwise have soon have [sic] come to an end.”
- 19 I should explain here that the apartment referred to was one of two properties in which the deceased and the first defendant had interests in the Ukraine, that paragraph 8(17) was struck out entirely, and that in paragraph 8(18) what was struck out were the words:
- “...took advantage of him financially when they were married...”.
- 20 It is also worth clarifying that the parties accept that if the deleted text that is the subject of this appeal is not included in the points of claim, then the second and third defendants will not be able to lead evidence on them, bearing in mind among other things the very serious nature of the allegation of unlawful killing and the terms of Deputy Master Lloyd’s order requiring the claim to be fully particularised.
- 21 The trial of the claim is currently listed for 10 days in October or November of this year.

The Chief Master’s decision

- 22 Chief Master Marsh noted that strictly, Rule 16 and Practice Direction 16 did not apply to points of claim that are ordered to be served in a Part 8 claim, but considered that the relevant provisions did apply, if necessary by analogy. He pointed to the requirement that the facts relied on in a claim should be stated clearly and concisely, Rule 16.4(1)(a), and to the particular need for that here given the seriousness of the allegation, and the fact that such an allegation is very rare in a civil case where there has been no criminal trial.
- 23 The Chief Master also pointed out that there is an express power to strike out in Rule 3.4(2), and he referred to Rule 3.1(2)(m) which empowers the court to:
- “... take any other step or make any other order for the purpose of managing the case and furthering the overriding objective...”.
- 24 He also referred to the court’s inherent powers to control claims. He commented at paragraph 15 that it seems to have been assumed at the hearing that the court had power to (in his words) “prune” a statement of case to exclude peripheral matters and confine it to matters that are essential to the case a party wishes to put forward.
- 25 The Chief Master noted that the evidence against the first defendant was circumstantial, but the key allegation was that the deceased was deliberately killed and the first defendant was complicit in that and intended the outcome. He also made the point that there is no reason in principle why circumstantial evidence could not be used to establish unlawful killing; and that the manner in which the claim was being pursued militated in favour of the second and third defendants being permitted to rely on a broad range of factors such that the court should be cautious to prune their case.
- 26 The Chief Master concluded that two earlier paragraphs in the points of claim should not be struck out. These are paragraphs 8(15) and (16). In those paragraphs the second and third defendants plead that the first defendant stood to gain from Mr Pring’s death; that she had misused the deceased’s monies intended for refurbishment of the apartment that I referred to earlier; and that, had Mr Pring inspected that apartment, which was supposed to be being refurbished, as he had intended to do in February 2008, he would have discovered that the first defendant had behaved dishonestly by not spending money that Mr Pring had provided for the purpose of the refurbishment.
- 27 The Chief Master said that these allegations were directly relevant and should not involve expensive factual inquiry. They were not, therefore, deleted.
- 28 In contrast, the Chief Master said that sub-paragraph (17) related to events that took place six months after the death and were at best peripheral. If established they would put the first defendant in a bad light, but they were some distance from supporting an intention to have Mr Pring killed. Inclusion of the sub-paragraph would also involve looking at judicial proceedings in Kiev, requiring the expense of translation and assistance from Ukrainian lawyers. He concluded that it was right for the court to consider limiting the scope of the factual inquiry and that sub-paragraph (17) fell on the wrong side of the line, taking into account what he said was its peripheral nature and also issues of proportionality. He also referred to a lack of particularity, although he noted that that could be cured.
- 29 So far as the words in sub-paragraph (18) are concerned, the Chief Master left in allegations that the first defendant married the deceased for his money and caused his death for her financial benefit. He said the words deleted were emotive and lacking in clarity, were

wholly unparticularised and would require full investigation into the finances of both parties at the date of their marriage and during it, requiring extensive evidence and taking up a lot of time at trial.

The parties' submissions

30 Both parties accepted that the court has an inherent jurisdiction to strike out parts of a statement of case. However, Counsel for the second and third defendants submitted that the CPR must be interpreted as a whole and having regard to the existence of the express power to strike out in Rule 3.4(2). Although the Chief Master used the term “peripheral”, he was not actually saying that the allegations were irrelevant. Counsel referred in particular to Rule 3.4(2)(b), which provides that the court may strike out a statement of case (or part) if it appears to the court:

“(b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings....”.

31 Counsel for the second and third defendants submitted that the Chief Master erred in considering relevance, wrongly applied his power to strike out on the basis of disproportionality, and wrongly assumed the extent of the cost and time involved when there was no evidence of that. Counsel said that where circumstantial evidence is relied on, then individual parts of that evidence which might by themselves seem insubstantial, can prove crucial when looking at the evidence as a whole. Taking account of Rule 3.4(2), Counsel submitted that averments should not be struck out unless they are abusive, vexatious or irrelevant. Although there is a saving in Rule 3.4(5) which makes it clear that it “...does not limit any other power of the court to strike out...”, where an assertion is potentially relevant the power should only be exercised sparingly, in an exceptional case and with very good reason.

32 Counsel also submitted that the decision by the court in this case not to hear a potentially relevant part of the claim did not amount to dealing with the case justly, but instead failing to deal with it. He referred to a comment of Lord Woolf MR in *McPhilemy v Times Newspapers Limited & Others* [1999] 3 All ER at 794B to the effect that a party cannot be prevented from putting forward an allegation which is central to his case, although the court can control the manner in which it is done.

33 Counsel argued that paragraph 8(17) of the points of claim is highly relevant to motive – a significant aspect of circumstantial evidence that does not just go to whether the first defendant is to be believed – and that the six month gap was not material. He also submitted that the judge erred in applying the proportionality test, which should be applied to the claim as a whole rather than by reference to the evidential significance of an individual allegation. The fact that at the time the Chief Master reached his decision the first defendant had not pleaded to those paragraphs meant that it was not possible to determine the cost or expense of establishing those paragraphs. So, the conclusion that it would be disproportionate in evidential terms was premature. The question at the case management conference was whether the pleading was outside the December 2017 order and, if it was, whether the amendment should be allowed.

34 In relation to sub-paragraph (18), the second and third defendants’ position is essentially that the first defendant is a gold digger who had the deceased killed for financial reasons,

and therefore it is relevant to plead the nature of the relationship between her and the deceased. Counsel submitted that the Chief Master failed adequately to have regard to relevance and wrongly held that it was disproportionate, when there was in fact no evidence as to the extent of the issues between the parties.

- 35 Counsel for the first defendant submitted that the second and third defendants are not entitled to raise these points because there were no procedural arguments about constraints on the Chief Master's powers at the hearing before him, and indeed the Chief Master was actually being asked to exercise those powers.
- 36 I agree with Counsel for the first defendant that the second and third defendants were specifically asking for permission to plead the paragraphs, so they knew they had to be prepared to argue that they should be permitted to include them. But I also agree with the second and third defendants that the focus at the hearing was whether those paragraphs were within the earlier order, rather than the extent of the Chief Master's powers.
- 37 Counsel for the first defendant also submitted that the appeal does not do justice to the Chief Master's careful reasoning or to his regard for the context, including the fact that the other defendants had opposed the application to require the forfeiture claim to be determined, that they were required to fully particularise their allegations, and that those allegations had to be set out clearly and concisely, particularly given their serious nature. It would be disproportionate if allegations of negligible probative value were permitted to take up significant resources.
- 38 Counsel also referred me to *Willers v Joyce & Anor* [2017] EWHC 1225 (Ch), another decision of the Chief Master, particularly paragraph 32 which refers to the need to focus on an objective assessment by the court of the appropriate share of resources to be allocated to a case.

Discussion

39 Under CPR 52.21(3):

“The appeal court will allow an appeal where the decision of the lower court was—

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity...”.

- 40 It is not argued that there was any irregularity. So, in order to succeed in this appeal, there must have been an error of principle or the decision must otherwise be wrong – and, I would add in the context of a case management decision such as this, plainly wrong. Where the appeal is against the exercise of a discretion, the judge must have exercised his discretion outside the generous ambit within which reasonable disagreement is possible (see *Tanfern v Cameron-McDonald* [2000] 1 WLR 1311 at 1317). It is not sufficient that the appellate court might have reached a different decision or taken a different approach.
- 41 In *AEI Rediffusion Music Ltd v Phonographic Performance Ltd* [1999] 1 WLR 1507 at 1523, Lord Woolf MR, citing an earlier case, referred to the need to show:

“... that the judge has either erred in principle in his approach, or has left out of account, or has taken into account, some feature that he should, or should not, have

considered, or that his decision was wholly wrong because the [appeal] court is forced to the conclusion that he has not balanced the various factors fairly...”.

- 42 Taking account of both parties’ acceptance that the court does have an inherent jurisdiction to strike out in exercise of its general case management powers, I am satisfied that the Chief Master did have power to prune or excise matters from a statement of case, or in this case points of claim, where the material struck out is irrelevant or is peripheral. See, for example, *Pathway Resourcing Ltd v Kaul* [2008] EWHC 3078 (Ch) at para.50, where there is reference to limiting the issues to “those that really matter”.
- 43 The question for this Court is whether the Chief Master took account of the right factors and was entitled to weigh them as he did in exercising that power. In particular, Counsel for second and third defendants say that outside the confines of Rule 3.4 (2) the Chief Master should only have exercised his power to strike out in exceptional circumstances and having exhausted other possibilities.
- 44 In my view, the starting point must be Rule 1 of the CPR and the overriding objective of the Rules of enabling the court to deal with cases justly and at proportionate cost (Rule 1.1 (1)). This includes, among other things, saving expense and dealing with cases in ways which are proportionate to the amounts involved; the importance of the case; the complexity of issues; as well as the financial position of each party (Rule 1.1 (2)(c)).
- 45 There are also references to ensuring that cases are dealt with expeditiously, and allotting to a case an appropriate share of the court’s resources taking into account the need to allot resources to other cases (Rule 1.1(2) (d) and e)). Rule 3.1(1) makes it clear that the list of powers set out in Rule 3.1 is in addition to any other powers the court may have.
- 46 I do not think it is necessary to determine specifically whether Rule 3.1(2)(m) applies in this case, but I do note that it is broad in its terms, and that it has a specific reference to the overriding objective.
- 47 I also note that the initial words in Rule 3.1(2), which contains the list of powers, state: “Except where these Rules provide otherwise ...”. As Counsel for the first defendant pointed out, it is not apparent that there is any other provision that does “provide otherwise” and that prevents paragraph (m), or indeed paragraph (k) which is a power to exclude an issue from consideration, applying. I also note that The White Book, section 3.1.3, indicates that Rule 3.1(m) codifies or duplicates the inherent jurisdiction.
- 48 I found some assistance from the *McPhilemy* case referred to earlier, in particular Lord Woolf MR’s comments at p.794 that pleadings are critical to identify the issues and the extent of the dispute, but also that there is a new emphasis on proportionality in Rule 1 of the CPR.
- 49 I am clear that the Chief Master had both the circumstances and unusual nature of the case, and the overriding objective, well in mind. He referred in some detail to the nature and history of the allegations as well as to the court’s powers under its inherent jurisdiction and Rule 3.1(2)(m). He gave full and clear reasons. I consider that he was entitled to exercise

the court's jurisdiction to exclude paragraph 8(17) and some words in paragraph 8(18) for the reasons that he did.

- 50 The events referred to in paragraph 8(17) took place around six months after Mr Pring's death and well after the first allegation against the first defendant about involvement in killing had been made. The Chief Master found the allegation in paragraph 8(17) to be "peripheral", which I think he meant not central to the case or of limited relevance. The latter phrase is expressly used in paragraph 29(1) of the judgment.
- 51 He recognised that where state of mind is at the forefront of the case, it may not be clear where the line is to be drawn between averments that are relevant and of substance and those better characterised, he said, as mud-slinging.
- 52 He also carefully considered proportionality which, in my view, he was clearly entitled to do in accordance with the overriding objective. He referred to the requirements for translation of court documents and the need for assistance from Ukrainian lawyers.
- 53 Importantly, the key allegations that Mr Pring funded the purchase and refurbishment of the apartment were not deleted. In that context, whilst not entirely irrelevant, the point at paragraph 8(17) is at best a marginal one. The second and third defendants' case is left substantially unaffected, as the Chief Master recognised at paragraph 38.
- 54 As I said at the hearing of this appeal earlier today, of more relevance will be the evidence which will, I am assured, be before the court, about a spouse's entitlement to an interest in an estate under Ukrainian law and her position as joint owner of the apartment. The first defendant's position as I understand it is that under Ukrainian law, she is in any event entitled to two-thirds of the apartment, such that any issue before the Ukrainian court was relevant to the balance only.
- 55 I think this underlines the Chief Master's conclusion that including the allegation in paragraph 8(17) might show the first defendant in a bad light but is some distance from supporting an intention to have Mr Pring killed.
- 56 In relation to paragraph 8(18) it is clear that the Chief Master also had in mind proportionality. He referred (at paragraph 33) to the need, if that text was included, for a full investigation into the marital finances, including extensive disclosure, witness evidence, and substantial additional cost which in his view would not further the case to any material degree. He also referred to it as an emotive assertion of a generalised nature. But, importantly, he left in the allegation that the first defendant married the deceased for his money and the allegation that she caused his death to rid herself of him and for her own financial benefit.
- 57 I do not think this is an appropriate case to set out any specific guidelines about the circumstances in which the power to strike out may be exercised given that it is accepted by all the defendants that the court does have such power, even where the express terms of Rule 3.4(2) are not engaged.
- 58 I do agree that the court should be slow to exercise its power to strike out, which is clearly an extreme one, and I was referred to section 3.4.3 in The White Book and the case there referred to of *Biguzzi v Rank Leisure* [1999] 1 WLR 1926. Alternatives to strike out should also be considered. Strike out is generally the last option. However, proportionality is

clearly a relevant issue, as is the relevance or extent of relevance of the matter pleaded. I would not go so far as to say that the power to strike out can only be exercised in exceptional circumstances. In making that submission the second and third defendants effectively assume that the assertions are properly to be taken as relevant, which I think in fact is disputed. The Chief Master was certainly not persuaded that they were directly relevant.

- 59 I would also not go so far as to say that all other possibilities apart from a strike out must always be exhausted before a strike out is made. Although Counsel for the second and third defendants criticised the way in which the Chief Master exercised his discretion and suggested that it was at least a premature decision, and that he should have waited to determine how the first defendant would plead to the allegations and to get a better idea of the evidence required, I do not think that these criticisms are sufficiently serious for an appellate court to determine that the decision was wrong rather than being a decision reached within the range of the judge's case management discretion.
- 60 As I have already indicated, it is not sufficient that the appellate court might have chosen a different approach. Instead, it is necessary to show that the judge erred in principle, or took account of factors he should not, or failed to take into account factors that he should, or that his decision was wholly wrong because the appellate court is forced to the conclusion that he has not balanced the various factors fairly. In my view, that high hurdle is not met, and accordingly I have concluded that the appeal should be dismissed.

CERTIFICATE

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This transcript has been approved by the Judge