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IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES (ChD)  
[2021] EWHC 2686 (Ch)



No. PT-2018-000659

Rolls Building  
Fetter Lane  
London, EC4A 1NL

Thursday, 16 September 2021

Before:

CLARE AMBROSE  
(Sitting as a Deputy Judge of the High Court)

B E T W E E N :

(1) SAYED AHMED RAHBARPOOR  
(2) BROOK GREEN (LONDON) ASSOCIATES LLP

Claimants

- and -

(1) KHALID SULIMAN  
(2) SAAD ABDUL JALIL  
(3) PERSONS UNKNOWN  
(4) NAPLEX PROPERTIES LTD

Defendants

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MR G. ROSEMAN (instructed by Mills Chody LLP) appeared on behalf of the Claimants.

MR F. CAMPBELL (instructed by Mishcon de Reya) appeared on behalf of Defendants.

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**J U D G M E N T**  
**(Via Microsoft Teams)**

THE DEPUTY JUDGE:

- 1 This is the hearing of the claimant's application of 13 April 2021 for:
  - a) permission to rely on the fact of the defendants' previous convictions, which are spent under the 1974 Rehabilitation of Offenders Act;
  - b) summary judgment; alternatively
  - c) an order for a sum of money to be paid into court under CPR Part 24 as security for costs, as a condition for the defendants being permitted to continue to defend the claim.
- 2 I also deal with the defendants' application, dated 8 September 2021, for an order for further information to be provided under Part 18.

### **The factual background**

- 3 The underlying dispute is about a property in West London, 121 Sinclair Road ("the property"). The claimant says he is the registered owner since 1978 and the defendants have unlawfully trespassed on this property since 2017, taken over the property and misappropriated rental income. The defendants accept that the claimant has been the registered freehold proprietor but say that the first defendant is the beneficial owner and that he acquired beneficial ownership in a property swap deal, evidenced by a written declaration of trust, signed by the claimant and the first defendant and also the second defendant, and witnessed by a solicitor, and that this declaration was signed on 14 January 2001 with both defendants in attendance.
- 4 They also maintain that they have occupied the land throughout the period since 2001 via tenants, sub-tenants and licensees, and that they have occupied with the claimant's consent. They have put the claimant to proof as to his identity and for him to show that he is the person named as owning legal title to the land. The claimant denies executing the declaration of trust. He says it is a forgery and denies that the defendants have been in occupation.

### **The procedural background**

- 5 In June 2018 the claimant issued simple possession proceedings for 121 Sinclair Road and the matter went before the County Court. It has now been transferred to the High Court and an amended defence was served in 2019. The matter was due to go to an eight-day trial in March 2020 but that was adjourned for health reasons of the claimant. The matter is now listed for a five-day trial due to start on 15 November 2021. Before me I have an 800-page bundle with a number of statements, including statements from the solicitors and also from the defendants themselves.

### **The application for permission to rely on spent convictions**

- 6 The claimant seeks permission to rely on two convictions of the first defendant, which were both imposed in 2010 and these were two convictions. One was for making a fraudulent representation to staff at the Land Registry and the other one was for making a false

representation to staff at Companies House. The claimants' primary case is that they can rely on the charge sheets and the fact of imprisonment in relation to these two convictions, without seeking the court's permission because that would be merely relying on evidence of the conduct constituting the convictions and that would not engage the prohibition under the 1974 Act of referring to spent convictions, and for this purpose the claimants rely on *Hussain & Ors v The London Borough of Waltham Forest* [2020] EWCA Civ 1539.

- 7 The claimant's alternative case is to seek permission to rely on the convictions under section 7(3) of the 1974 Act. This permits the court to admit evidence regarding spent convictions where it is:

“...satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto...”

- 8 Section 7(3) is an exception to the general position under section 4(1) which suggests that no evidence of convictions shall be admissible. The defendants object to both aspects of this application and they say that the evidence of these convictions is not necessary to be admitted for justice to be done.

- 9 Turning to my decision, *Hussain v Waltham Forest* is authority that the 1974 Act does not prohibit reference to evidence of conduct constituting a spent conviction. In that case the Court of Appeal found that a local authority could properly rely on the evidence of forgery by individual landlords of gas certificates in properties on earlier occasions. In that case, the Court of Appeal emphasised that the policy of the 1974 Act was to protect individuals who have spent convictions from undue burden from the mere fact of the conviction, and the mischief was typically where a conviction may block employment opportunities or prevent a person obtaining matters like insurance or a bank account. It looked at the history of the legislation and the different treatments in previous legislation of the fact of conviction and the underlying conduct and emphasised that under previous law the conduct giving rise to a crime would be admissible in civil proceedings. It also emphasised that conduct that may amount to a crime may be the subject of civil proceedings or regulatory sanctions. The policy of the 1974 Act was not to prevent regulators relying on such conduct in civil actions and the statute under section 4(1) draws an express distinction between the conviction and the underlying conduct, and it did not render evidence of the underlying conduct inadmissible.

- 10 *Hussain* is distinguishable here since the claimants are seeking only to rely on a charge sheet and imprisonment. The charge sheet is evidence merely that the defendant was charged. The Claimants are not putting forward any evidence of conduct and this is wholly different from where evidence of the conduct that gave rise to the conviction is put forward, for example where a regulator could evidence insider dealing or forgery. It would run a coach and horses through the 1974 Act if an employer could rely on a charge sheet and time in prison in order to refuse a person work on grounds of a spent conviction, and the matter is no different in court.

- 11 In relation to the Claimant's application for permission I accept that the matters for which the defendants were convicted and the conviction itself is highly relevant evidence in this

case and that the claimant has met the threshold of maintaining that justice cannot be done without admission of the spent convictions.

- 12 The defendants contended that the height of the claimants' case was the assertion that the convictions were highly relevant. This goes some way towards showing that they are very important to the determination of the central issues before the court. The evidence of these convictions is of critical importance in addressing the central question of whether, on the balance of probabilities, these two individuals forged the declaration of trust and then later sent it to the Land Registry. This is particularly critical in circumstances where, as appeared to be the case here, the first defendant was suggesting that his record was clean compared to that of the second defendant and that the claimant had made false allegations regarding forgery of documents relating to the second claimant at Companies House. I should add the second claimant is a company to which the claimant granted a lease of the property in 2017.
- 13 The defendants say they did nothing dishonest while the claimants' case is that the convictions are near identical type of conduct and evidence in terms of a *modus operandi* of being willing to present false documents in order to obtain an advantage at organisations such as the Land Registry or Companies House. They say that the defendants failed to show that they would be unfairly prejudiced by the admission of this evidence. I also take into account that the court is well able to apply the *Lucas* direction and can balance the weight of a previous conviction and will look at that evidence critically, especially if it is a spent conviction.

#### **The request for further information.**

- 14 The defendants asked that the claimants should be ordered to provide a full response to their request for further information and they suggested that the claimants had unjustifiably refused to answer some of the requests on grounds that the matters requested were irrelevant. I am not satisfied that this application is justified. The purpose of a request for further information is generally to enable a party to give or seek information to clarify any matter which is in dispute. An order is generally only granted where reasonably necessary to enable a party to prepare their own case or to understand the case they have to meet. It will not be allowed if the information is going solely to cross-examination as to credit or merely fishing in order to see if they can find a case. Here there is no pleaded case that the claimant has relied on a false identity or that a pseudonym that he has used is his true identity or that he has falsely claimed to be the person who is named on the title deeds.
- 15 The defendants can cross-examine the claimant as to his credibility and his evidence that he has put forward as to his identity, but they are not entitled to make a request for further information in order to see if something turns up that would enable them to amend their case to that effect.
- 16 The defendants placed heavy emphasis on suggesting that there had been a failure to disclose a passport and that in itself justified a request for further information. I am not satisfied that a complaint regarding disclosure justifies a request for further information. Again, this is a matter that the claimant can be cross-examined on, but it does not justify a request for further information with a view to seeing what emerges.

## The application for summary judgment

- 17 This was probably the most significant part of the application and the claimant relied on a large number of matters which are said to show that the defendants' defence is hopeless and that their case on forgery is bound to succeed. In the time available – it is towards the end of the day – I am not going to attempt to paraphrase paras.38, 39 and right up to 57 of the claimants' skeleton argument. It clearly sets out the various points relied on and, at this stage, I do not need to paraphrase and summarise what has been put forward but I have carefully taken all those points into account.
- 18 The defendants' answer is that the application for summary judgment is hopeless and they say that the key issues raised by them going to the identity of the claimant and the genuineness of the declaration of trust require determination at trial following thorough cross-examination and submissions from both sides. The claimant cannot avoid that process merely by pointing to past dishonesty on the part of the defendants, particularly where their case is that it is the claimant that has been lying. They also rely on mounting evidence that the claimant may be impersonating the true property owner. I did not think that was a fair basis for objecting to the summary judgment application because they have not made any case that the claimant is impersonating the true property owner. That would be a very serious allegation to make and unless the allegation is made, it must be regarded as mere speculation as to whether the defendants think he may be impersonating the owner.
- 19 However, I have taken their allegations into account, plus the records regarding the claimant's passport and what they regarded as serious unanswered questions. Their position is that their case has merits and that in fact it is the claimant that lacks credibility. The point to the lack of credibility as to what he has done with the property since 1978 and they suggest that his account of what happened, namely that he left the property with caretakers for forty years, stretches credulity. They say that his denial of having signed the declaration of trust is uncorroborated and his approach to disclosure has been dire. In particular, that it is suspicious that he has lost two passports that have been requested and he refused to disclose a further passport or explain what passport he used over a lengthy, unexplained gap in the critical period of 2001 to 2002, shortly after the disputed document was said to have been signed in London. They say that the obvious inference is that he has used multiple passports which he has lied about, and that goes directly to his credibility on the critical issue as to whether he signed the declaration of trust. On that point, they go to the points raised in the request for further information, and say he has failed to answer these without good reason.
- 20 They say the Home Office records suggest that he has been travelling on multiple passports because they show him entering the country on one passport but do not show how he would have left, and that the same can be seen from visas showing travel between Syria and Australia. The only inference can be that he has used multiple passports and they have fair answers to the criticisms raised by the claimants. For instance they are criticised for inconsistency in the way they have explained what happened to the original document before a district judge in the County Court in 2018. They say it cannot be said that they were lying and the allegation requires cross-examination. The court cannot conclude that there is no prospect of success, showing that their account is credible.
- 21 Similarly, they say that inconsistency in their case regarding who drafted the declaration of trust cannot be treated as showing that they were dishonest. The court cannot conclude that without a trial because their answer is that it simply reflects poor recollection of what

happened. Indeed the defendants instructed counsel to put forward a further version of events in this hearing as to who drafted the document and as to the role of the solicitor who is said to have witnessed the signature.

- 22 They also say there is unexplained evidence as to the claimant's use of a pseudonym and as to his biographical information that has been provided on websites regarding the individual going by this pseudonym, and also an incorrect date of birth has been provided on public records for him. They say that these are all matters they must be able to put to the claimant at trial and the matters raised by the claimant have limited weight. For example, regarding the solicitor who witnessed the declaration, the claimant's answer is that the Solicitors Regulation Authority and the National Crime Agency have given firm evidence that that solicitor was not practising at those premises at that date, although subsequently used those premises. The defendants say it is quite possible that the solicitor was working there prior to providing official notification to the SRA.
- 23 The defendants say there has been no finding of deliberate or dishonest contempt of court and that the court should not sanction inadvertent breaches. The second defendant has admitted impersonating the claimant on two occasions and also, in an extraordinary situation, he has impersonated the defendant in a criminal trial that involved a local authority pursuing proceedings in relation to a property. Their position is that the defendant has acknowledged this and regrets having impersonated these individuals as it was a foolish thing to do. He says he did not do it in a hostile way and in impersonating the claimant he was only trying to show that the agents did not know who the claimant was.
- 24 The defendants also accept that the second defendant was filmed putting a sledgehammer through the window of the premises of a tenant, but they say that has limited weight because it does not show that he committed a forgery in 2001. They emphasise that the allegations put against the first defendant are much more limited and that there is no evidence of his use of violence and the allegations of forgery against the first defendant are denied in relation to presenting forged documents at Companies House, and on this the defendants say that no finding of forgery has been made. At most an order was made by Judge Middleton in the Companies Court on 30 August 2018, declaring that the relevant changes to the register, which were procured by approaching Companies House, were "factually inaccurate or derived from something that is factually inaccurate or is a forgery." The defendants' case has always been that they believed they had legitimately acquired an interest in the second claimant and although that position was not upheld by the County Court, they were not found to have been dishonest.

## Conclusions

- 25 The law on summary judgment was not controversial and both sides referred me to the principle summarised by Lewison J in *Easycare Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch). I need not set out these well known principles but flag up that the case law suggests the court should grasp the nettle where fair to do so and need not take a party's factual dispute at face value and may conclude that there is no substance to the assertions, particularly if contradicted by contemporaneous documents.
- 26 The defendants refer to *Fashion Gossip Ltd v Esprit Telecoms UK Ltd & Ors* [2000] EWCA Civ 233, where the Court of Appeal suggested that where there are allegations of dishonesty which cannot be conclusively determined, for instance by a conviction, then the court should

not make a finding summarily and that all the facts and every nuance needs explanation. Both sides also referred me to the decision of Cockerill J in *Foglia v The Family Officer Ltd & Ors* [2021] EWHC 650 (Comm).

- 27 All these cases show that a court must show very considerable caution in granting summary judgment where dishonesty is critical to the claim in question, especially where each side will effectively be saying that the other is lying. This is the paradigm case for having a trial, where each side's witness evidence can be challenged. However, *Foglia* and *Easyair* do suggest that the court may properly be willing to grasp the nettle where there is firm, unanswerable contemporaneous evidence suggesting that the defence to the allegation of dishonesty has no real prospect of success. So, for instance, in *Foglia*, summary judgment was allowed where contemporaneous emails provided several separate answers to any defence to the allegation of fraud.
- 28 Here the claimant's case is based on his title, which the defendants answer by relying on a deal evidenced in writing which the claimant says is a forgery. Dishonesty is at the heart of the claimant's case and the disputed document is said to have come into existence twenty years ago. There are limited contemporaneous documents from either side. The defendants rely on the document itself but do not have an original, while the claimant denies he was in the country and relies on a copy of his passport showing that he was not in the country.
- 29 I have to decide whether the matters raised by the claimant show that the defendants have no real prospect of success in showing that the declaration of trust is genuine and the claimant is the one that is lying. I have carefully weighed up all the factors raised by the claimants. They plainly show that the defendants will face a very uphill battle in defending their case. However, I am not satisfied that they justify a final determination that would preclude any opportunity for the defendants to test the claimants' evidence at trial. This is because on the key issue as to whether the defendants dishonestly forged the declaration of trust, there is limited contemporaneous correspondence throwing light on the allegation. The claimant's passport is one piece of evidence put forward to show that he was not in the country, as he now says. The defendants would have fair grounds to examine the claimant as to whether that document is reliable evidence to prove that he was out of the country and telling the truth on that. The passport is far from decisive in itself and the defendants have grounds to cross-examine him on his use of this passport, other passports and the Home Office disclosure on this. This will also go to his credibility.
- 30 There is the further matter of whether the defendants have a real prospect of defending the claim on the basis that the claimant has failed to establish that he is who he says he is. If the matter goes to trial, the defendants would be able to cross-examine the claimant on his identity documents, including the passport. It is not for me to address precisely what questions would be appropriate. However, it is significant that no positive case has been made that the claimant is not who he says he is. There has been no allegation that he has falsely claimed an identity and they cannot challenge his evidence on that basis. As matters stand, the claimant's identity has been confirmed both by his solicitor in London and Iranian solicitors, who were independent and selected by the defendant, in Iran.
- 31 On this aspect, the defendants' counsel suggested that they were considering their case and might amend their case on identity. This proviso really adds nothing. The points made regarding the claimant having provided an incorrect date of birth or having used a pseudonym or their question marks regarding the passports were of very limited weight to show that he is not who he is. They showed no real prospect of success as a ground of

defence. If the defence rested solely on challenging the claimant's evidence on identity, I would have concluded it had no real prospect of success but their case does not rely solely on that. The defendants' case is essentially going to credibility as to who is telling the truth on whether the declaration was signed by the claimant.

- 32 There is also a factual issue as to the quantum of damages and even if dishonesty is established, there is a genuine issue as to the precise sum that is recoverable which is a matter suitable for trial.

### **Alternative application for security for costs as a condition of defending the claim**

- 33 The defendants say that the exceptional application for reverse security for costs is unfounded and it cannot be said that it is improbable that the defendants will succeed at trial. They say that the application is egregiously late and that it risks stifling the defence and overlooks the fact that the claimants already have the advantage of having avoided the need to provide security themselves and obtaining a freezing order over the defendants.
- 34 I have taken careful account of the guidance regarding granting of conditional relief under CPR Part 24.2 and the caution to be exercised in granting such a relief, in particular where a defendant may have a good defence. My view is that this case is exceptional and the circumstances justify the court exercising its discretion to make such an order. There is very strong evidence that the defendants have acted dishonestly regarding this property and that it is highly improbable that they will successfully defend the claim. The handwriting expert suggests that the declaration of intention is not the claimant's signature. It is either not a genuine document, a forgery, or the claimant departed from his signature. The claimant's evidence is that he was in Syria at the time when the defendants alleged that he signed the document. This is a matter that he will be cross-examined on, but as it stands the evidence shows that he was in Syria.
- 35 The defendants have put forward inconsistent evidence as to what they say happened to the original declaration of intent. That document is said to be witnessed and stamped by a solicitor at premises that the SRA have independently confirmed were not that solicitor's premises at the time and he was later struck off. There is no corroborating evidence to show that he ever practised there at the time or to show that the document was created when the defendants allege it was.
- 36 Their case seems to turn on showing that the claimant lied because he was in the country and because he used multiple passports. This case is based solely on inference, that he must have used multiple passports and that the absence of stamps on his passport is significant in going to his credibility. Again, it is significant that no positive case has been made that he uses multiple passports or any positive case in that respect. The defendants have provided no contemporaneous evidence showing their occupation and management of the company during the period 2001 to 2017. The documents they have produced do not link themselves to the property. Some of the documents they rely on and their witness evidence presupposed that they were managing the property and signing documents while in prison. While this is theoretically possible, it was wholly unlikely and suggested that their account was unreliable. The defendants' convictions for similar behaviour show a willingness to break the law and dishonestly fabricate documents and impersonate individuals and provide them to authorities in order to defraud others.



- 37 There is also strong evidence that the claimants have not been conducting the litigation in good faith and there has been a history of a failure to comply with orders. The second defendant has admitted impersonating the claimant to the claimant's previous solicitors before proceedings commenced and then, after proceedings commenced. The defendants have also admitted the second defendant threatened the claimant's current solicitors who were acting in these proceedings and he impersonated the claimant for the purpose of trying to extract the claimant's file from his previous solicitors.
- 38 I also take into account the defendants' shifting case as to what happened to the original declaration of trust and as to how it came about and their failure to comply with the court's orders, in particular the court's freezing orders and the disclosure orders related. I am satisfied that the claimant has shown that there has been a history of non-compliance with court orders. Effectively the defendants have had to correct matters stated in their disclosure. So they have acknowledged that they have failed to comply with the court order. They argued that their non-compliance has not been shown to be deliberate and there has not been a finding of contempt of court.
- 39 It is not necessary for the court to make a finding that there has been a contempt of court, or even that there has been a dishonest or deliberate contempt of court. It was significant that the defendants recognised that the court would not have exercised its discretion to grant security for costs in their favour because of their failure to comply with the orders. So it was their own position that they were at fault in having failed to comply with the orders and that it was not even worth asking the court to exercise its discretion in their favour because of their unjustifiable failure to comply with the court's orders.
- 40 I take into account that ordinarily applications for security for costs should be made as soon as possible, and I take into account that the trial is in a couple of months. However, I am not satisfied that this does preclude a conditional order. The application was issued many months ago. More importantly, this is an unusual case in somewhat exceptional circumstances in relation to the conduct of these defendants. Although the defendants have acted differently and the second defendant has more obviously acted wrongly in impersonating the claimant in relation to this property, the fact is their case stands or falls together.
- 41 In addition, a summary judgment application was not something the claimants could have applied for at an early stage, particularly in a case where there are allegations of fraud. Therefore the timing is not as strong a factor in this case as it would be in an ordinary application for security for costs where a party needs to get its house in order at the earliest possible stage. The claimant has also provided an explanation for the delay, including the Covid embargo on possession claims which prevented progress and was a good reason for money not being spent on the claim.
- 42 I reject the suggestion that the court should decline to grant a conditional order because the defendants had not been given security for costs. The defendants chose not to seek security for costs and they cannot rely on that choice at this stage as a reason why the claimant should not be safeguarded from being left exposed on costs where they are unlikely to succeed. I also reject the suggestion that the security requested would stifle the claim. I take into account that the defendants have not established that they have a good prospect of success on their defence, merely that they have shown that they should be allowed an opportunity to test the evidence in circumstances where serious allegations cannot be decisively answered on the contemporaneous evidence.

- 43 The defendants failed to produce evidence to show that security would stifle the claim. The second defendant produced a short statement saying that the proceedings have been funded to date by borrowing money from his partner and that she is running out of patience. He says he highly doubts that they would be able to fund both security for the claimants' costs and also their own costs. However, the defendants provide no explanation as to the terms under which they funded the case to date or what other sources of funding they had explored. The guidance makes very clear that it is up to the defendants to show they are unable to fund the case and to look into sources of funding, whether family or associates. They have funded this case to date and covered very substantial fees. There was nothing in their evidence to establish that they would be unable to cover the additional sum for which security is sought. Their evidence falls far short of showing that they would be unable to defend the claim if an order for security is given.
- 44 The defendants' conduct in dissipating assets and failing to disclose assets in breach of the court's orders is also a decisive consideration. Again, on that point, I considered there was weight in the claimants' submissions regarding breach of the freezing order and I preferred the claimants' submissions on that point. In the time available I am not able to provide a summary of all the different points made but there was powerful evidence of failure to comply with the court's orders, and that is a decisive consideration in assessing their evidence on how they would fund the case and also the prejudice to the claimant if no security is granted.
- 45 I consider that the claimants' request for £50,000 to cover costs to trial was a modest and fair estimate that reflected the costs of taking this matter to trial. In practice it is likely to cost more and that that sum reflected what would be fairly required to safeguard the claimant from prejudice, but also not place an undue burden on the defendant in defending the claim. As I say, their costs may be substantially greater and the defendants did not produce their costs budget as to what they are spending on the trial, so I considered that the claimants' estimate of £50,000 reflected their budget and also was a fair sum to order security for.

#### **LATER**

- 46 It seems to me that around 25 per cent of the costs are attributable to the Part 18 application and the claimants' application under the 1974 Act on which they have been successful. Therefore, for that element of the costs, the claimants should have a costs order in their favour. In relation to the summary judgment application, I do not regard the defendant as a successful party. It resisted summary judgment but only on the basis that an order was made that it can put its case but has to pay its way and it would be inconsistent with that order to say, notwithstanding that conclusion, it is entitled to a costs order in its favour. So the balance of the costs should be costs in the case. There should be an order of 25 per cent of the costs in the claimants' favour.
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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.