Neutral Citation Number: **[2022] EWHC 2105 (Comm)**

Case No: **CL-2021-000689**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **8 July 2022**

Before :

His Honour Judge Mark Pelling QC

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Between :

(1) Eurohome UK Mortgages 2007-1 Plc **(2) Eurohome UK Mortgages 2007-2 Plc** **(3) Saret Holdings Corp**	**Claimant**
- and -	
(1) Intertrust Management Limited **(2) Intertrust Corporate Services Limited** **(3) Intertrust Directors 1 Limited** **(4) Intertrust Directors 2 Limited** **(5) Ms Paivi Helena Whitaker** **(6) Intertrust Nominees Limited**	**Defendant**

Case No: **CL-2021-000744**

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Between :

(1) Stratton Mortgage Funding 2019-1 PLC **(2) Corelli Capital AG**	**Claimant**
- and -	
(1) Intertrust Management Limited **(2) Intertrust Corporate Services Limited** **(3) Intertrust Directors 1 Limited** **(4) Intertrust Directors 2 Limited** **(5) Ms Paivi Helena Whitaker**	**Defendant**

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Charlotte Cooke (instructed by **Bryan Cave Leighton Paisner LLP**) for the **Group 1**

Hearing dates: **8th July 2022**

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RULING

His Honour Judge Mark Pelling QC **Friday, 8 July 2022**
(**10:42** am)

Ruling by **HIS HONOUR JUDGE MARK PELLING QC**

1. These are two applications to strike out claims pursuant to CPR rule 3.4(2) on the basis that there is no realistic cause of action pleaded and/or the proceedings are abusive. The first claim is known in these proceeding as the Eurohome litigation and is in claim number 689. The other is the Stratton proceedings and is made in claim number 744.
2. Turning first to the Eurohome issue. The first claimant and second claimant are Eurohome companies and identified as such collectively in the evidence and other submissions made in these proceedings. The first to sixth defendants are referred to collectively in this judgment and in these proceeding as the Eurohome Intertrust Parties.
3. The Eurohome Companies are special purpose vehicles. They issue notes that give effect to the securitisation of various portfolios of residential properties. The first defendant in that litigation, Intertrust management, provides corporate services and directors to the Eurohome Companies. The entirety of share capital in the Eurohome Companies is held by Eurohome Mortgages Holding Company Limited, and the second defendant, Intertrust CSL, is the share trustee of Eurohome Mortgage Holdings Limited. The third to fifth defendants are the Eurohome company directors.
4. The claim which is the subject of the strikeout application is effectively for declarations that none of the Eurohome Intertrust Parties have any status within the Eurohome Companies and are not authorised to act on their behalf, and any actions taken by them on or after 29 November 2021 are invalid.
5. The underlying basis for this claim is set out in a letter of 1 December 2021 from Saret Holdings Corporation ("Saret"). Saret is a company incorporated in accordance with the laws of the Marshall Islands and is in a transition state between being fully registered and finally struck off. Its status, according to Marshall Islands law, is such that it can sue and be sued in its own name, even in that twilight stage of its existence.
6. The key point for present purposes is that the 1 December letter asserted that Saret, another Marshall Islands company called Keycards Holdings Limited, Mr Kumar, and a yet further Marshall Islands company called United Technology Holdings Limited, had authority to issue a capital call to Eurohome Mortgage Holdings in respect of unpaid share capital. The underlying basis for this assertion is that those entities and individuals are said to have appointed themselves

"*de facto directors*" of the Eurohome companies and therefore are entitled to act in their name and on their behalf.

7. It is submitted on behalf of the applicants for the strikeout relief that I am now considering that this is obviously wrong. I accept that submission.

8. The articles of association for the Eurohome Companies specify how directors can be appointed and removed. It is not suggested on behalf of the entities and individuals to which I have referred that they were appointed directors using that methodology, hence they assert they are de facto directors. Regrettably, this is the latest in an increasingly long line of cases featuring a similar modus operandi, using various Marshall Island registered corporate entities, thought to have been orchestrated by an individual called Mr Hussain. In one of those earlier cases, BMF Assets (No. 1) Limited v Sanne Group Plc and others [2021] EWHC 3306 (Ch), Mr Justice Miles addressed this issue comprehensively. He concluded that there was no serious issue to be tried in that case, that the four persons or entities who described themselves as de facto directors of the relevant companies had become directors. The underlying principle of law is identified in paragraph 50 of Mr Justice Miles' judgment where he says this:

> "*What is entirely clear is that people cannot make themselves directors of a company simply by saying that they are prepared to assume that position. It is legally nonsensical to think that a stranger to a company could -- by a unilateral act by saying they are prepared to assume the position -- become a director of a company. It would mean that anyone could become a director of any company simply by saying so, regardless of the constitutional, regulatory and corporate governance requirements. That is legally absurd. What it seems to me has happened here is that the four de facto directors, as they call themselves, are corporate cuckoos, trying to push themselves into the Issuers and Holdings and forcing out the true directors. There is no basis in law for that.*"

Similar conclusions have been reached in similar cases that have been decided subsequently, notably by His Honour Judge Matthews in Mansard Mortgages v Beyat Holdings [2021] EWHC 2255 (Ch), see in particular paragraph 67 of his judgment, and my judgment in Eurosail-UK 2007-4BL Plc and others v Wilmington Trust SP Services (London) Limited and others [2022] EWHC 1019 (Comm) at paragraph 5.

9. The key point for present purposes is that once that conclusion has been reached, then the whole of the house of cards that is this litigation must necessarily collapse to the ground. It therefore

follows that this claim must be struck out under CPR rule 3.4(a) on the basis that there is no reasonable grounds for bringing the claim.

10. There is another issue which is equally relevant in relation to the application under CPR rule 3.4(2)(b). The claim form was purportedly signed by Mr Kumar acting purportedly as director and attorney of the Eurohome Companies. He had no such status. His claimed status was that of a de facto director, as I have explained, and that is fundamentally flawed in law for the reasons I have also identified. It therefore follows that the claim form was issued without authority and is therefore an abuse of process and should be struck out on that ground as well.
11. There are other points which are relied upon by Eurohome, including a failure to comply with a previous order made by me in other proceedings requiring the filing of evidence dealing with identity, but it is unnecessary for me to deal with that issue at this stage. The long and the short of it is this claim depends upon an assertion that the four individuals or entities concerned were "de facto" directors of the Eurohome Companies, they manifestly were not and could not be, and therefore that is the end of this litigation. In any event, as I have already explained, the claim form was an abuse of process because it was signed by someone who at no stage had authority to sign it.
12. I turn next to the Stratton claim. Again, that is a special purpose vehicle with a similar business to that of the Eurohome Companies. Again, Intertrust Management provide corporate services and directors to Stratton. Again, the entire issued share capital in Stratton is held by a holding company and Intertrust CSL is the share trustee of the holding company, and Intertrust D1 and Intertrust D2 are Stratton's directors. I should mention that a Ms Whitaker is a director of Stratton, Intertrust Management, Intertrust CSL and Intertrust D1 and 2, because it will be necessary later on in this litigation to refer to some correspondence received by her.
13. This claim was issued on 20 December 2021. It seeks declarations in very similar terms to those that were sought in the Eurohome litigation and consequential orders said to flow from the declarations.
14. The relevant alleged basis for this claim is set out in a letter of 21 December 2021, sent to Ms Whitaker by someone claiming to be a Ms Watson and purportedly acting on behalf of another Marshall Islands registered entity called Corelli Capital AG ("Corelli"). The underlying basis of this claim is an assertion that Corelli and three other alleged individuals, including Ms Watson, were de facto directors of the relevant companies and thus had authority to issue a capital call and authority also to issue or authorise the issue of the Stratton proceedings.

15. This claim too is doomed to failure for all the reasons that the Eurohome claim is fundamentally misconceived. The Stratton articles of association again set out standard procedures for appointment of directors; and none of those have been or are even alleged to have been complied with. The sole basis on which the individuals and entities concerned purport to act is as self appointed "de facto directors". For the reasons I have explained earlier in this judgment, that is simply hopeless as a matter of law for the reasons identified by Mr Justice Miles in the judgment I cited from earlier in this judgment. Because the individuals had no authority to act on behalf of the Stratton companies, it necessarily follows that the house of cards that is this litigation must fall to the ground and the proceedings must be struck out on that basis, pursuant to CPR rule 3.4(a). Similarly, it should also be struck out on the basis of an abuse of process pursuant to 3.4(2)(b), on the basis that the individual who purported to sign the claim form, that is to say Mr Kumar, and Ms Watson, who signed the particulars of claim, did not have authority to authorise the commencement of or continuation of proceedings in the name of the Stratton companies. In those circumstances and for those reasons that claim too must be struck out.
16. Having regard to what I have said in relation to the strikeout applications, the next issue which logically arises is whether or not I should certify the claims as being totally without merit. This is a logically distinct act from merely striking out the claims, but nonetheless I am entirely satisfied that these claims should be certified as totally without merit. These were claims that were utterly hopeless as a matter of law for the reasons I have identified and involved the commencement of proceedings by individuals who manifestly had no authority to commence the proceedings in the names of the companies concerned. In those circumstances, I certify each of the claims to be totally without merit.