Neutral Citation Number: [2024] EWHC 2288 (Ch)

Case No: PT-2024- BRS-000049

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 9 September 2024

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

(1) HUGHES FAMILY PROPERTY CO LTD **Claimants**
(2) HUGHES TRADING CO LTD

- and -

NO DEFENDANT **Defendant**

- -
- -

Henriques Griffiths LLP for the **Claimants**

Application dealt with on paper

- -

This judgment will be handed down by the Judge remotely by circulation to the parties or representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 am on 9 September 2024

HHJ Paul Matthews :

Introduction

1. The applicants, two limited companies, have applied on Form N244 dated 2 May 2024 for an order permitting them to make a CPR Part 8 claim without naming a defendant, pursuant to CPR rule 8.2A. The provides that:

> "(1) A practice direction may set out circumstances in which a claim form may be issued under this Part without naming a defendant.
>
> (2) The practice direction may set out those cases in which an application for permission must be made by application notice before the claim form is issued.
>
> (3) The application notice for permission –
>
> (a) need not be served on any other person; and
>
> (b) must be accompanied by a copy of the claim form that the applicant proposes to issue.
>
> (4) Where the court gives permission it will give directions about the future management of the claim."

The application is supported by evidence in box 10 of the form.

2. The Part 8 claim itself was also issued on 2 May 2024, and at present does not state a defendant. The claim is supported by a witness statement from Bradley Simon Hughes made on 10 April 2024. The claim is made under section 84(2) of the Law of Property Act 1925, which relevantly provides as follows:

> "(2) The court shall have power on the application of any person interested—
>
> (a) To declare whether or not in any particular case any freehold land is [or would in any given event be] affected by a restriction imposed by any instrument; or
>
> (b) To declare what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed and whether the same is [or would in any given event be] enforceable and if so by whom.
>
> … "

3. The claim relates to land known as 28 Redwalls Meadow, Dartmouth TQ6 9PR. This is a residential property. It is the subject of two registered titles. The first claimant (and applicant) is the registered proprietor of the fee simple estate in part of the land, and the second is the registered proprietor of the fee simple estate in the remainder. The land is the subject of a restrictive covenant contained in a conveyance of the whole land dated 5 August 1977. That covenant forbids the construction of any building on that part of the land now owned by the second claimant/applicant. The claim seeks a declaration

that this covenant does not bind the land, *ie* that the claimants' land is not "affected" by the covenant. Their evidence does not say this in so many words, but it seems clear that the applicants wish to construct such a building on the land.

The 1977 Conveyance

4. The conveyance dated 5 August 1977 ("the 1977 Conveyance") was made between London and County Securities Limited, Richard Norman Darbey Langdon, Chantreys Building Company Limited ("Chantreys"), of the one part, and Ronald William Peacham and Joan Peacham, of the other part. It deals however with a rather more complicated legal situation than the simple word "conveyance" would suggest.

5. It appears that London and County Securities Limited, then in liquidation, was selling as mortgagee of the land of which this parcel formed part, and that Richard Langdon was the liquidator of the company. I am told that the company has since been dissolved and the liquidator discharged from office. The purchaser of the land was Chantreys, who was, however, subselling to Mr and Mrs Peacham as intending owner-occupiers. It is true that there is nothing in the conveyance expressly to show that the mortgagee's power of sale had arisen, or, indeed, that it was being exercised. But this is not actually necessary in order for the purchaser to obtain a good title: Law of Property Act 1925, section 104.

The basis of the claim

6. The legal basis for the declaratory relief sought by the claim is set out in the claim form in this way (correcting an immaterial mistake in the paragraph numbering):

> "(i) pursuant to Clause 2 of the 1977 Conveyance, the Covenants were expressed to be '[f]or the benefit and protection of the remainder of the Purchaser's Redwells Meadow Estate and with the intent so that this covenant shall run with and bind the land hereby conveyed into whomsoever hands the same shall come';
>
> (ii) pursuant to the Preamble to the 1977 Conveyance, the "Purchaser" is identified as Chantreys;
>
> (iii) pursuant to the First Schedule to the 1977 Conveyance, the land being conveyed by the 1977 Conveyance is the Properties
>
> (iv) Chantreys did not own any land falling within the description 'the remainder of the Purchaser's Redwells Meadow Estate' at the time that the 1977 Conveyance was executed and the Covenants contained therein were given;
>
> (v) Chantreys only acquired land falling within the description 'the remainder of the Purchaser's Redwells Meadow Estate' on 18 August 1977;
>
> (vi) as Chantreys did not own the dominant tenement intended to be benefited by the Covenants at the time that they were given, the benefit of those Covenants was never annexed to any part of 'the remainder of the Purchaser's Redwells Meadow Estate', so as to be enforceable by Chantreys or their successors-in-title; and

(vii) in the premises, the Properties are not burdened by the Covenants and accordingly do not bind the First and Second Claimants as registered owners of the Properties."

7. The Claim was begun under CPR Part 8 on the basis that there was unlikely to be any substantial dispute of fact.

8. The evidence in the claim shows that Chantreys acquired the whole of an area of land known as Redwells Meadow, but, from the conveyancing documents that I have seen, it may be that it acquired them, or some of them, at a time or times *after* 5 August 1977. There are now some eight residential properties in a row, known as 21-28 Redwells Meadow. In each case that I have seen, it appears from the conveyances that each of the ultimate purchasers covenanted with Chantreys not to build on part of the land conveyed, expressly "[f]or the benefit and protection of the remainder of [Chantreys'] Redwells Meadow Estate … "

CPR rule 8.2A

9. As to the question who, if anyone, should be the defendant to this claim, CPR rule 8.2A refers to a practice direction setting out (i) circumstances in which a claim may be issued without a defendant, and (ii) cases where an application for permission to do so must be made before the claim form is issued. The difference between (i) and (ii) is simply as to timing. In cases under (i), issue of the claim form is possible without naming a defendant is possible without first seeking permission. In cases under (ii) it is not. This is a case under (ii) and strictly the claim should not have been issued until permission had been obtained.

10. Although there have been three practice directions made supplementing different aspects of Part 8 (none now remaining in effect), there is no specific practice direction dealing with the issue of a claim without a defendant. (There are however rules and practice directions dealing with particular cases where there may not be a defendant: see the provisions listed in para 13.39 of the Chancery Guide, 2024 revision.)

11. In *Credit Agricole Corporate and Investment Bank v Persons Having an Immediate Right etc* [2021] 1 WLR 3832, a case concerning section 13 of the Torts (Interference with Goods) Act 1977, Morgan J discussed rule 8.2A. He referred to the earlier decision of the Supreme Court in *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471, and said:

> "19. … Lord Sumption [in *Cameron*] went on to say that the courts had themselves made exceptions to the requirement that a defendant be named in a claim form. He did not disapprove the decisions which created such exceptions. He then added, at [12], that the rules neither expressly authorised, nor expressly prohibited, exceptions to the general rule that actions against unnamed parties were permissible only against trespassers. It seems therefore that it is consistent with the decision in *Cameron* to hold that it is open to a claimant to issue a Part 8 claim without joining a defendant in some cases which are not dealt with by a specific practice direction. It may not matter whether the ability to do so is regarded as

> being conferred by CPR r.8.2A itself or by a more general rule, such as CPR r.3.1(2)(m)."

Discussion

The applicants' position

12. In the present case, the applicants say that, as London and County Securities Limited has been dissolved and its liquidator discharged, they have no sufficient interest in the matter. I agree with that as far as it goes, but it does not follow that no-one has an interest as a successor in title to the company. Assets belonging to a dissolved company at the time of dissolution generally vest in the Crown as *bona vacantia*. In appropriate circumstances the company can be restored to life under chapter 3 of Part 31 of the Companies Act 2006 for the purpose of vindicating unlitigated causes of action. However, I do not think that is necessary here.

13. The applicants also say that they have written to Chantreys, the express covenantees, which has said that it does not oppose the claim. Since Chantreys has long since sold all the land, and by the terms of the conveyances that I have seen is expressly not liable to its purchasers for not enforcing the covenant against other purchasers, I am not surprised at this. (However, I should say that I have not actually seen Chantreys' letter.) Accordingly, the applicants say that there need be no defendant, and seek the court's permission to proceed on that basis.

Neighbouring owner/occupiers

14. The applicants do not however mention the owners and occupiers of Nos 21-27 Redwells Meadow. Depending on their personal attitude, and on any legal advice which they may hereafter take, they may or may not wish to be heard on the question of the binding effect of the covenant. The evidence supporting the claim and the application is however conspicuously silent on their position. They do not appear to have been approached, as Chantreys apparently has been approached, to see whether they wish to become involved.

15. No doubt the applicants' view is that, since their submission is that at the time of the 1977 conveyance Chantreys did not yet own any other part of the Redwalls Meadow land, at any rate at law, the covenants cannot bind the owners of No 28 as against the owners of the other properties, and it is therefore futile to make them defendants. That may of course turn out ultimately to be the position, but it is rather putting the cart before the horse for them to say in effect that, "since we have a very strong case, *unanswerable*, in fact, we need not fight against anyone".

16. In this connection, indeed, I am reminded of what Megarry J said in *John v Rees* [1970] Ch 345, 402:

> "As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change."

17. In any event I stress that, although I have seen conveyances for Nos 21, 23-24, and 26-28 Redwells Meadow, I have not so far seen any conveyances for Nos 22 and 25 Redwells Meadow. The applicants say that the terms of these other conveyances are

surely going to be the same, *mutatis mutandis*, as those I have seen. These latter suggest that Chantreys did not acquire their legal estate in the land until *after* the 1977 Conveyance. As to that, indeed, what the conveyances that I have seen do is to *refer* to the earlier conveyance by which it is said Chantreys acquired its legal estate, but they do not set out the terms.

18. What this means is that the court is being asked to make an inference, even in those cases where a conveyance is available. Moreover, although the conveyance for No 24 does refer to a conveyance by which Chantreys may have acquired its legal estate, the date given is simply "1977", without reference to the month and the day. So, in three of the seven cases, there is not even the inferential evidence relied on by the applicants for their case.

19. The application (and indeed this claim) is put before the court on the basis of the documents and information available to the applicants/claimants. There is nothing wrong with that. But they are the successors in title to the purchasers from Chantreys of No 28 only. The current owners and occupiers of Nos 21-27, on the other hand, derive their titles through their own purchasers from Chantreys, and will almost certainly have access to further relevant documents and information, probably including the missing conveyances for Nos 22 and 25.

20. They may also have access to one or more of the earlier conveyances which are merely referred to in those conveyances, but of which no copies are presently available. Some of these documents may bear on the factual question as to when exactly Chantreys acquired its interests in the several parcels of land on Redwells Meadow. But they are not before the court, and I do not know what they may say.

21. In addition to that, the owners and occupiers of Nos 21-27 might wish to argue that, even if it be found to be the case that Chantreys had no legal estate in other land at the time of the 1977 conveyance, the doctrine of the building scheme still applies. The conveyances are, as noted by the applicants, in materially identical form, and all contain a plan of the *whole* development of Nos 21-28. Chantreys did not stumble across a number of individual building plots that happened to be adjacent to each other.

22. It may well be that the houses were in course of erection even before Chantreys acquired its legal estate in each parcel of land. Chantreys may therefore have had other rights, perhaps equitable interests, before that. Questions of notice may therefore also arise. Of course, nothing I say here amounts to an indication of how such questions might be decided, if indeed they were ever raised. I simply make the point that the applicants cannot know how the owners and occupiers of the other properties might put their cases.

Other points

23. There are two other points to make. One is that the general rule is that court decisions bind only those who are parties to them: *Vandervell Trustees Ltd v White* [1971] AC 912, 931, 932, 937, 941-42, HL. This is subject to certain exceptions, such as

representation orders (*eg* CPR rules 19.8 and 19.9) and notice procedures (*eg* CPR rule 19.13, formerly 19.8A), but, so far as I can see, none of those exceptions applies here. So, if the owners and occupiers of Nos 21-27 are not made parties, on the face of

it they will not be bound by the court's decision. The only persons who will certainly be so bound are the claimants themselves. In that case, *cui bono*?

24. The other is that the court will be asked in this claim to make a declaration. That is a discretionary remedy: CPR rule 40.20; *Bank of New York Mellon v Essar Steel India Ltd* [2018] EWHC 3177 (Ch), [21]-[22]. One aspect of the case at trial therefore will be whether there are any factors tending to make it undesirable for the court to make a declaration. Without deciding anything at this stage, not telling some of the people who may have something to say about the matter looks to me at present as if it might be such a factor.

Conclusion

25. My conclusion therefore on this application is that the obvious defendants to this claim are those who would have an interest in enforcing the covenant if it were valid, namely the owners and occupiers of Nos 21-27 Redwells Meadow. If approached, they may, of course, like Chantreys, express no interest in taking part. But that will be their choice, rather than that of the applicants. In my judgment, therefore, unless the owners and occupiers of Nos 21-27 confirm that they do not oppose the claim, they are proper to be made defendants.

26. Because this is not an appropriate case for a claim to be made without a defendant, the application is dismissed. However, notwithstanding that the claim form was issued before permission was obtained, the claim as issued may continue on the basis that the owners and occupiers of Nos 21-27 Redwells Meadow either confirm in writing that they do not oppose the claim or have been served with the claim form and supporting evidence (and the usual response pack).