

ENGLAND AND WALES / JUDGMENT

Brookes v Hodgson

COURT
IN THE HIGH COURT OF JUSTICEBEFORE
HIS HONOUR JUDGE EYRE QC

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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (CH D)
On appeal from Crewe County Court
Case No: M17C143
Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ
Date: 22
nd February 2018

Before: HIS HONOUR JUDGE EYRE QC
-----Between: JOHN ROGER BROOKES
- and -
DOUGLAS HODGSON

Claimant

Defendant

1st Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP

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Mr Mark Jackson, (solicitor of Lake Jackson solicitors)for the Claimant

Mr Elis Gomer (instructed by Jolliffe & Co LLP) for the Defendant

Hearing date: 22nd February 2018

JUDGMENT

HH JUDGE EYRE QC: 1. 2. 3. 4. 5. 6. 7. 8. By an order sealed on 8th August 2017, District Judge Wallace dismissed the Claimant John Roger Brookes's application to set aside a statutory demand. The Claimant sought permission to appeal. The application for permission to appeal was dated 7th August 2017. On 25th September 2017, an application was made to the court. That was an application made by the Claimant seeking an extension of time in respect of the time limits provided for in an order which had previously been made by HH Judge Hodge QC. The application was supported by a witness statement from Mr Mark Jackson, the solicitor instructed on behalf of the Claimant. That application asserted, in a letter which was annexed to the witness statement, that correspondence had been sent to Crewe County Court on 9th and 10th August and on 14th August. It exhibited purported emails of those dates. The assertion was in short form that a transcript had been sought and not yet been provided. That extension of time was granted by Judge Pelling QC. On 27th November 2017, his Honour Judge Bird refused permission on paper. On 5th December 2017, the Claimant made an application for oral reconsideration of that refusal. The Claimant did not - as should have been done in compliance with paragraph 7.4 of the Practice Direction 52B - serve a copy of that oral reconsideration application on the Defendant, nor was that done at the same time. It is said by Mr Jackson that a letter of 8th December was sent referring to the application, but the Defendant says that that was not received. The Defendant makes an application by application dated 19th January of this year to which there are two limbs. The first limb says this: "The order sought is an unless order requiring the Appellant to file and serve a certificate of service in respect of the service of a copy of the Appellant's solicitor's letter dated 5th December 2017." What Mr Gomer says is that the Claimant did not comply with the mandatory requirements of the Practice Direction. He says that if an unless order is made providing for the strike out of the oral reconsideration application, and so of the appeal, unless a certificate of service is provided then the Claimant will not be able to provide a certificate of service. It follows, he says, that there should be a strike out. Mr Jackson accepts that no copy was sent of the 5th December application. He does refer to the letter of 8th December. Mr Jackson says that the requirement in the Practice Direction is a directory rather than a mandatory requirement. He says that there is no sanction from which he should be seeking relief. I am satisfied that there was noncompliance with a mandatory requirement of the Practice Direction. A copy of the application which was made to the Court should have been sent to the Defendant on 5th December. That is not a light matter, it is a serious matter, and it should have been done. There was an attempt to move matters forward by sending a letter of 8th December. That was not received. But given that Mr Jackson has - in a witness statement with a statement of truth - deposed to that letter being sent, I am not going to go behind that. 9. 10. 11. 12. 13. So what should I do? Mr Jackson is right there is technically no sanction in place at the moment. Should I say "Well, unless you can prove that you did do this, I am going to strike out the appeal", knowing at the time I make that order that it cannot be proved? Or should I move directly to look at the reality of the matter? The latter is the appropriate course. If I had made an unless order and if the position had been that the Claimant could not comply with it, would I have imposed the sanction

or would I have granted relief? I have to derive assistance from the overriding objective and from the approach laid down by the Court of Appeal in *Denton v White*. I have to look at the seriousness of the breach; the reason for the breach; and at the overall circumstances of the case. This was a serious breach. When the court requires copies to be provided of important documents to other parties, then there must be compliance with that. The explanation for the failure here is simply sloppiness and a failure to address the proper requirements of the rules. But I have to look at all the circumstances. A letter was sent on 8th December. I have to also look at the fact that we are dealing here with an application for oral reconsideration of permission to appeal, where the Respondent is under no obligation to get involved at all. I should also make the point that the Respondent is aware now of what the position is and of what is being said. I am satisfied that if an unless order had been made, I would have granted relief, and therefore to that extent I make no order on the first limb of this application. The second limb seeks an order requiring Mr Jackson to attend the hearing listed for today. Underlying that is the Defendant's assertion that there are grounds for believing that there was deliberate misleading of the court and that an explanation is required as to that.

14. Mr Jackson not only has attended, but he has also provided a witness statement in which he gives an explanation for the documents sent to the court.
15. Mr Gomer makes - with considerable force - the point that that explanation raises as many questions as it answers. In essence, what Mr Jackson says is that he accepts that a misleading impression was given to the court, and that the court was told that documents were sent which were not sent. But he says that this again is down to sloppiness and bad practice through cutting and pasting in email chains. 16. The Defendant raises points which give scope for some degree of scepticism about that explanation. Putting it shortly, there is nothing on the Crewe County Court file which could indicate the material which had been cut and pasted to make the document at page 290 in the bundle being the purported email of 14th August 2017. The court is left with the impression that Mr Jackson's explanation fails to demonstrate the detailed investigation which was called for. But I am not in a position to say that Mr Jackson's explanation is not substantially correct. I am not in a position to say that this was not the result of gross sloppiness and inadvertence on his behalf and on behalf of those acting with him. 17. Underlying this is the question of what should be done next. Mr Gomer suggests that there might be scope at some point for saying that the order of 25th September extending time was obtained by fraud, or scope for saying that the court has been deliberately misled. But there is no material at the moment which would justify coming to such a conclusion, nor is there an application seeking to set aside HH Judge Pelling QC's order, which I think I said was 25th September which might be the incorrect date. HH Judge Pelling QC's order was 26th September, rather than the 25th.

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18. Mr Jackson has given an explanation. There is scope for some contention whether that is an explanation that would merit further probing. But there is no material at the moment to say that there was fraud in obtaining HH Judge Pelling QC's order, nor is there material which would of itself justify the court of its own motion initiating contempt proceedings. Therefore, I make no order in respect of the second limb of this application, Mr Jackson having attended and having provided a witness statement.
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