

14 November 2023

B E T W E E N:

(1) MR BARRY CASH

Claimant

and

**(1) MIDAS PROPERTIES T/A G & E BAIO
LTD NOW MIDAS JV LTD**

Defendant

DEFENDANT’S SKELETON ARGUMENT

Pre-Reading

1. References below to page numbers are to the digital numbers in the hearing bundle.
2. The Defendant suggests that the court should read:
 - a. Claim Form issued on 30 May 2023 (pages 1 to 3);
 - b. Witness Statement of David Ian Marsden dated 30 October 2023 (pages 40 to 47).

Background

3. The Claim relates to the removal of a ceiling at 15 Small Street, Bristol, BS11 1DE (the “Property”) on 30 August 2017.
4. This is the Defendant’s skeleton argument in relation to the Defendant’s application dated 2 August 2023 (pages 14 to 19) to strike out the Claim. The skeleton argument has been filed in accordance with paragraphs 1 and 2 of the Notice of Hearing of Application dated 20 September 2023 (pages 27 to 28).

5. For the reasons set out below, the identity of the Defendant is difficult to ascertain. Accordingly, in this skeleton argument “D” will be used to mean any party that might be considered to be a defendant in these proceedings.

Application to Strike Out

6. It is difficult to conceive of a claim that is more deserving to be struck out:
 - a. the claim is against wrong Defendant;
 - b. there is no cause of action;
 - c. there is no breach;
 - d. there is no loss;
 - e. there is no causation;
 - f. the claim is against public policy.
7. Of all of the elements required to bring a claim, not a single element exists.
8. Under CPR 3.4(2)(a) the court may strike out a statement of case if it appears to the court that the statement of case discloses no reasonable grounds for bringing the claim.
9. The D has also asked that a summary judgment be made against the Claimant (“C”) in favour of the D pursuant to CPR 24.2.
10. Practice Direction 3A gives examples of when the court may conclude the particulars of claim fall within rule 3.4(2)(a):
 - a. those which set out no facts indicating what the claim is about, for example ‘Money owed £5000’;
 - b. those which are incoherent and make no sense; and
 - c. those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the Defendant.
11. The core principles under CPR 3.4(2)(a) were summarised by Professor Burrows QC in *The Federal Republic of Nigeria v J.P. Morgan Chase Bank, N.A.* [2019] EWHC 347 (Comm). In paragraph 6 it states that the court must consider whether C has a ‘realistic’, as opposed to a ‘fanciful’, prospect of success.
12. The Claim does not disclose any legally recognisable claim against D. Not only does C not have a realistic claim, C has no claim and no prospect of success at all.

C issued the Claim against the incorrect party.

13. The Claim is against “Midas Properties trading as G&E Baio Ltd now Midas JV Ltd”. “Midas Properties” is not a legal entity. No claim can be brought against “Midas Properties”.

14. If the intended defendant is Midas JV Limited, then they are also the incorrect defendant.
15. This claim relates to an act that took place on 30 August 2017 at the Property, that act being the removal of a ceiling. The Property is registered at Land Registry under Title Number AV235141 (OCEs are at pages 45 to 47).
16. Mr and Mrs Baio are the freehold owners of the Property and were the freehold owners on 30 August 2017.
17. Freeths LLP brought the situation to the attention of C. C has now applied to amend the claim, on 10 October 2023.

No Cause of Action

18. Even had the correct defendant been sued, namely the freeholder of the Property, there is/was no contractual duty, nor any tortious duty of care, owed by D to C that might prevent D from removing its own ceiling. Accordingly, there is no cause of action.

No Breach of Duty

19. Even if there were a cause of action/duty of care, D is not in breach. D was within their legal right to remove the ceiling. They have done nothing to breach any duty that might exist.

No loss suffered by C

20. The Claim has been made nearly six years after the ceiling was removed from the Property.
21. C is a local citizen, who lives two miles away from the Property and who has not been affected directly nor indirectly by D's actions.
22. The inability to show any loss is demonstrated by C's own case on what his compensation should be. C claims a payment of £2,975.00 calculated as a lifetime membership to English Heritage and National Trust (having apparently never previously been a member of either).
23. The claimed loss is entirely unrelated to the removal of a ceiling at the Property. C cannot identify any loss suffered as a result of the removal of the ceiling.

No causation

24. *Hadley v Baxendale* (1854) 9 Exch 341 established over 150 years ago that a party can only claim a loss when it is reasonably viewed to have naturally resulted from the breach or that the parties should have reasonably contemplated that such a loss could occur naturally.
25. Mr Stephen Houseman QC reiterated how it is essential to prove that the causation of a loss arose from a proven breach in *YJB Port Ltd v M&A Pharmachem Ltd & Anor* [2021] 42 (Ch).
26. The losses claimed by C are unrelated to D's removal of the ceiling at the Property and cannot be seen as a natural loss arising from the event.

The risk of opening the floodgates of litigation

27. In *Hedley Byrne & Co Ltd v Heller & Partners Ltd* (1964) AC 465 (HL), the Court found that the law does not want to burden defendants with ‘an indeterminate amount for an indeterminate time to an indeterminate class’.
28. C is claiming compensation by way of his lifetime membership costs for English Heritage and National Trust. If this were allowed, potentially every citizen of Bristol could make a similar claim. Bristol City Council has published figures which estimate a population of 471,200 people at the end of June 2021 in Bristol.

Litigant in Person

29. C is a litigant in person but the court is reminded that litigants in person are under the same duty as lawyers and should be treated the same way legally. The Supreme Court made it clear in *Barton v Wright Hassall LLP* [2018] UKSC 12 that there was no reason to give litigants in person any special leeway except where the CPR are “particularly inaccessible or obscure”.
30. This is a cynical attempt by C to extract money from Ds in the hope that they will just “pay up” rather than incur the time and cost in defending it. It is not the way the court system should be used. It is an abuse and the court are respectfully invited to strike out the claim as totally without merit, and order C to pay the costs.

Further Applications

31. C has filed an application to amend the claim. If the claim is struck out, there is no need for these proceedings to be amended.

Freeths LLP
8 November 2023