

IN THE COUNTY COURT AT BRISTOL

BETWEEN:

BARRY JOHN CASH

Claimant

and

GIUSEPPE BAIO AND ELAINE LISA BAIO
(T/A G&E BAIO PARTNERSHIP)

Defendant

Witness statement of Barry John Cash and statement of case

This case concerns the destruction of a Jacobean ceiling at 14 Small street in Bristol. The building is owned by Mr and Mrs Baio who wished to develop it into student flats. On being told that Historic England wished to visit to examine the ceiling because an application had been made to list it, the Baio's immediately had the ceiling destroyed, to evade the law on preserving historic buildings and features. They claimed that the ceiling had been torn down "to respect the safety of the building". This is admitted by the defendants and happened on 30th August 2017. (page1)

This caused outrage. But since the ceiling had not been listed no action could be taken. In Wales there would be interim protection in such circumstances but there is no such rule in England and despite the passage of six years nothing has been done to change the law. Therefore as a Bristolian and proud of my City's history and heritage and being retired and having the time, I took it upon myself to take action.

I issued proceedings online at the County Court Money claims centre on 30th May 2023. Unfortunately I am not legally trained and the way the questions are asked on-line is different to the paper based system. So I didn't complete it correctly. I offer my sincere apologies to the court for any inconvenience caused.

A further complication is that in making my claim I named the defendants as "Midas Properties T/A G & E Baio Ltd now Midas JV Ltd". This is not correct. The correct defendant should be GIUSEPPE BAIO AND ELAINE LISA BAIO (TRADING AS G&E BAIO PARTNERSHIP) because that is how they are described on the title deeds according to their solicitor. Strictly speaking that is not correct. The title deeds describe the registered owners as Giuseppe Baio and Elaine Lisa Baio. (page 2)

The reason I named Midas JV Ltd on my claim is that on the planning application, (page 3), they are "Midas Properties / G&E Baio Ltd". A search on the Companies House website reveals 7 companies with Midas Properties in the title, but none have a Bristol Address. Midas JV Ltd is listed as previously Midas Properties Baio Ltd, has an address on Whiteladies Road and the directors are Giuseppe and Elaine Baio. Only one share has been issued. (page 4).

Since Mr and Mrs Baio are the owners of Midas JV Ltd any costs that arise as a result of this case will be paid by them whether that is in the name of Midas JV Ltd or GIUSEPPE baio and Elaine Lisa baio (trading as G&E baio partnership). I wrote to Midas JV Ltd three times, on 23.3.21, 7.4.21 and 30.5.23. They never replied. If they were bothered by my naming the company instead of Mr & Mrs Baio as a partnership why didn't they tell me? (pages 5, 6, &7)

I am most grateful to the defendant's solicitor for making me aware of these errors. I made an application to the court on 10th October 2023 asking for permission to correct these errors and re-issue my claim on the small claims track. (pages 8, 9, 10, 11 & 12)

Instead of coming to court to explain their actions the defendants have instructed their solicitors to try to get the case thrown out. This hearing has not been allocated to the small claims track and so they have written to me saying that they will claim £5,000 plus VAT when they win. (page 13) This is wrong. Both parties agreed to the small claims track on the Directions questionnaire form N180. (pages 15, 16, & 17))

They may be correct that I will not win my case. But it is my right to bring a grievance before a Court and have a judge rule on it. The small claims track was provided so that those of limited means are able to seek justice against companies with deep pockets. I am a pensioner on £14,990 pa. and they are well off property developers.

First they evade the law on listing buildings, and then they manipulate the system to try and frighten me off with the threat of costs. I suggest this tells us something about Mr. and Mrs Baio.

I appreciate that my claim is unusual, in that it is more usual to claim for damage to a tangible item i.e. a chattel. But that does not mean that my case has no merit.

Prior to 1932 I could not have brought a claim because I had no contract with Mr and Mrs Baio. But *Donoghue v Stevenson* 1932 in the House of Lords changed that. Consider page 24 of that judgement. The lord Macmillan said "The grounds of action may be as various and manifold as human errancy and the conception of legal responsibility may develop in adaptation to altering social conditions and standards. The criterion of judgment must adjust and adapt itself to the changing circumstances of life. The categories of negligence are never closed". (page 18)

The defence claim I have no cause for action because I have not lost something. That isn't true. The Baios have impoverished my historical heritage and that of my descendents. Consider the statement by the Secretary of State for Culture, Media and Sport at page 19 & 20.

But is something so intangible of value? Well what of the love of a Mother for her child. That is clearly of value but you can't buy it at Mothercare. Or what of the courage of the man or woman who goes behind enemy lines, as a spy or saboteur in wartime, at huge personal risk? Their courage is of immense value to King and Country but you can't requisition it from the army quartermaster.

At Plymouth a wooden ship over 200 years old is preserved. It remains a commissioned warship in the Royal Navy. Why? It isn't capable of stopping a rubber boat load of asylum seekers. We keep it because in 1805 Admiral Nelson and 25,000 British sailors destroyed the French and Spanish fleets. Thus making the Royal Navy the pre-eminent navy throughout the nineteenth century and enabling Britain to build an Empire on which the sun never set. In 1904 25% of our national budget was spent on the Navy.

English is spoken throughout the world. The UK, a small country of 66 million, has one of the five permanent seats on the United Nations security council. Why? Because of our history. It is where

we come from and it makes us what we are. That is why it matters to so many of our citizens. The National trust has 5.37 million members. 50,000 people volunteer to help the trust preserve our heritage.

Our heritage matters to me and it matters to a dozen other citizens who have given statements expressing their loss and their outrage at what has happened Pages 21 to 42.

I have clearly lost something of value and therefore have a cause for action. But do the Baio's owe me a duty of care? In order for there to be a duty of care to me by the defendants my case must pass the Caparo three stage test.

1. It was reasonably foreseeable that the defendants action would cause me damage. Why do we have planning laws, tree preservation orders, rules about listing Historic buildings and what may be done to them? It's because what one person does to their property has an effect on the other residents of the City. It was foreseeable that a great many residents would be very upset by the Baio's destruction of the ceiling and this was borne out by the furious reaction in the media. As a Bristolian borne and bred I am one of those residents so damaged.

2. There has to be a relationship of proximity between claimant and defendant. This does not mean how close geographically we are. It means there is a close enough relationship for the action to have an effect on me. The purpose of the rules on listing historic buildings, which the claimant sought to evade, are not there for the benefit of an organisation such as the Council or historic England. They are there to preserve buildings for the benefit of Bristol's citizens, of which I am one. There is no intermediary between claimant and defendant. Therefore I say that the test of proximity is met.

3. Is it fair, just and reasonable that the law should recognise a duty on the defendant not to cause this damage to the claimant? Yes. The defendant has clearly not met the spirit of the law although the letter of the law was complied with. The ceiling was destroyed because it was feared that it would be listed and then there would be a criminal penalty for destroying it.

What does the reasonable and law aiding citizen do when told that part of their building may merit listing for protection? Do they cooperate with the authorities or do they immediately destroy the feature in case it costs them money if it is listed?

It is also worth considering page 8 of Donoghue where Lord Atkin says "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question". (page 43)

The fact that historic England wished to see the ceiling means that the owners knew it was of value to the Nation and that many people would be upset by its destruction. They knew that their action would cause the loss of many people's heritage but they didn't care. The defence has suggested that my claim should be denied because anyone in Bristol could have brought the same action. That is wrong. The fact that you wrong a large number of people does not make it alright. It simply means you have wronged a large number of people instead of only one.

Is an action in Tort the correct way to deal with this grievance? Page 44 is from a legal text book. It states that the main objective of tort law is compensation. However I am not doing this for the money. I have made this clear to the defence in several letters (pages 45 to 49). In them I have offered to drop my case if they make a donation to charity.

I am motivated by the secondary objectives of Tort. Firstly, deterrence. I hope that winning this case will deter the Baios and others from damaging our heritage in future. The defence claim that allowing my claim would allow every citizen in Bristol to bring a similar claim. This is not correct. The event took place over six years ago and is therefore out of time. No one can now bring a similar claim. However if the Baios destroy another artefact then they would risk action from dozens, (hopefully) perhaps hundreds of aggrieved citizens. That is precisely the point of my action. To deter the use of this legislative loophole, because as long as it exists, we can't protect anything.

The second objective is justice. The public recognition that what was done was wrong. Mr and Mrs Baio have shown no remorse. They have offered no apology to the citizens of Bristol for their vandalism. This is important.

I once made a claim against a man who had cheated two pensioners out of £6,000. Most of the claim failed and little money was recovered. But he was as red as a tomato. He was furious that he had to come to court and defend his action. I don't think he will cheat pensioners again.

The section on justice also gives an example of a claim in tort for an intangible wrong. So it is possible to bring such an action.

The defence claim there is no causation. Clearly this is wrong. The cause of the action is the destruction of the rare Jacobean ceiling which the defendants have admitted.

Allowing this claim would open the floodgates to unmeritorious claims say the defence. I do not agree. Trying to stop people destroying important parts of our heritage is not unmeritorious. Neither is trying to dissuade people from using legal loopholes to get around the law instead of cooperating with the authorities. I am merely trying to get developers to behave like responsible citizens instead of giving in to their greed.

Therefore I respectfully ask the court to refuse the defendants application to strike out my claim and award costs and instead to grant my application for a hearing on the small claims track. If it is convenient to the Court, I am ready to proceed with that hearing now.

I believe that the facts stated in this statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

Barry John Cash 8th November 2023