



Neutral Citation Number: [2019] EWHC 3370 (Ch)

Case No: 2990 of 2018
Appeal No. CH-2019-000073

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INSOLVENCY AND COMPANIES LIST (ChD)

**On Appeal from the Order of District Judge Obodai dated 22nd February 2019, sitting in the
Business and Property Courts in Manchester**

Sitting at the Leeds Combined Court Centre
1 Oxford Row
Leeds LS1 3BG

Friday 6 December 2019

Before :

MR JUSTICE SNOWDEN
(VICE-CHANCELLOR OF THE COUNTY PALATINE OF LANCASTER)

IN THE MATTER OF SAINT BENEDICT'S LAND TRUST LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between :

(1) LONDON BOROUGH OF CAMDEN
COUNCIL

(2) PRESTON CITY COUNCIL

Creditors /
Respondents

- and -

SAINT BENEDICT'S LAND TRUST LIMITED

Debtor/
Appellant

Clive Wolman (instructed by **Harrison Carter**) for the **Appellant**
Tom Gosling (instructed by **Greenhalgh Kerr**) for the **Respondents**
Hearing date: 29 November 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN :

1. This is an application by Saint Benedict's Land Trust Limited ("SBLT") for permission to appeal and (if permission is granted) to set aside the order of District Judge Obodai dated 22 February 2019. In that order, DJ Obodai dismissed a winding up petition (the "Petition") which had been presented against SBLT by London Borough of Camden Council ("LBC") in respect of eleven liability orders for unpaid business rates made by the Highbury Corner Magistrates Court in 2016 and 2017 in the total sum of £40,103.98. The Petition was supported by Preston City Council ("PCC") in respect of two unpaid costs orders in the sums of £1,347.50 and £1,400.
2. The Petition was dismissed because SBLT had paid the underlying debts owing to LBC and PCC after presentation in circumstances to which I shall refer. The District Judge also ordered SBLT to pay the costs of both creditors. However, SBLT contends that the Petition was inherently defective because the witness statement verifying it had not been signed as required by Rule 7.6 of the Insolvency (England and Wales) Rules 2016 (the "Insolvency Rules 2016"). SBLT contends that it was unaware of the defect and that in the belief that the Petition was regular, it was forced to make payment of the amount claimed by LBC to prevent the Petition being advertised. In these circumstances, SBLT contends that the District Judge should have struck it out and awarded SBLT its costs against LBC.
3. DJ Obodai further declared two applications which had been made by SBLT (i) for the transfer of the Petition to London from Manchester and for it to be struck out as an abuse of process with wasted costs, and (ii) for the hearing on 22 February 2019 to be vacated for further argument on another day, each to be totally without merit. She then made an order under CPR 23.13(2) and CPR 3.11 PD 3C paras 3.11 or 4.11 for the case to be transferred to a High Court Judge for consideration of whether to make an extended or general civil restraint order against SBLT. SBLT also appeals against those declarations.

Background

4. As indicated above, the Petition debt of £40,103.98 was the outstanding balance of sums due and payable under eleven liability orders granted by the Highbury Corner Magistrates Court in 2016 and 2017 in respect of unpaid business rates. A letter demanding payment of those sums and warning of the presentation of a petition had been sent to SBLT on 21 September 2018. That letter apparently did not reach SBLT until 5 October 2018. Shortly thereafter, on 8 October 2018, SBLT launched applications to have the liability orders set aside by the Magistrates Court and contended that it would be an abuse for LBC to present a petition.
5. In response, LBC contended that the orders were regular and long-standing so that the applications to have them set aside were bound to fail on the basis of the principles set out in R v Brighton and Hove Justices [2004] EWHC 1800 (Admin). The solicitors for LBC also asserted that unless and until the liability orders were set aside, they constituted enforceable debts which would found a winding up petition, relying on the provisions of rule 18(2) of the Non-Domestic

Rating (Collection and Enforcement) (Local Lists) Regulations 1989 which deems liability orders to be a debt for the purposes of section 122(f) of the Insolvency Act 1986.

6. When no payment was made, the Petition was presented to the Business and Property Courts in Manchester on 16 October 2018. The connection of this dispute with Manchester was that the solicitors acting for LBC are based in Wigan and they were also acting for another billing authority before the same court in respect of another contested petition against SBLT based upon liability orders for unpaid business rates.
7. After presentation of the Petition and further correspondence, the parties were still at odds as to whether the Petition was an abuse of process in circumstances in which SBLT indicated it was challenging the liability orders. At that stage, SBLT applied on 5 November 2018, without notice to LBC, to the High Court in Manchester for an injunction to restrain advertisement of the Petition. The basis for the application was that the Petition debt was genuinely disputed on substantial grounds relating to SBLT's entitlement to a discount from liability for rates on the basis that the premises concerned were used for charitable purposes. The application was refused by HHJ Bird (sitting as a Deputy High Court Judge). Mr. Wolman (who was not the counsel who was instructed before HHJ Bird) was unable to enlighten me as to the basis for that refusal. Indeed, the very fact that such application had even been made was, remarkably, not revealed by SBLT to LBC and PCC, or even to DJ Obodai at the hearing on 22 February 2019. Limited information about it only emerged piecemeal during the course of the hearing before me.
8. Having failed to obtain an injunction to restrain advertisement of the Petition, on 5 November 2018 the lawyers for SBLT indicated that they would be sending monies equal to the Petition debt to LBC's solicitors on terms that they should be held in a client deposit account for SBLT to await the outcome of SBLT's applications to set aside the liability orders. Without waiting for any agreement to those terms, the monies were sent to LBC's solicitors. On receipt, LBC's solicitors pointed out that it was not open to SBLT unilaterally to dictate the terms upon which the monies would be received by LBC, and that LBC's solicitors would accordingly treat the same as having paid the Petition debt. The solicitors also indicated that since the Petition had not been advertised and there were no supporting creditors, if LBC's costs were paid, LBC would consent to an order that the Petition could be withdrawn in accordance with rule 7.13 of the Insolvency Rules 2016.
9. SBLT did not agree to that proposal. Instead, on 7 December 2018, shortly before the first hearing of the Petition in Manchester on 10 December 2018, SBLT issued an application ("the First Application") seeking orders that the Petition should be transferred to the Business and Property Courts in London, that the Petition should be struck out, and for wasted costs. The essence of that application was that London was where SBLT and LBC were based and the appropriate venue for the Petition to be heard rather than Manchester, that the issue of the Petition was an abuse of process in circumstances in which the underlying liability orders were the subject of applications to the Highbury Corner Magistrates Court to set them aside, and that by using the winding up process in such circumstances, LBC's

solicitors had caused costs to be wasted unreasonably and improperly. The application indicated that further witness statements and skeleton arguments would be required and that a hearing time of 2.5 hours would be required.

10. On 10 December 2018 DDJ Brightwell adjourned the Petition and the First Application to be heard in Manchester on 22 February 2019 with a limited time estimate and directions for the filing of evidence and skeleton arguments.
11. As indicated above, PCC supported the Petition by LBC. PCC had earlier been a defendant to an attempt by SBLT to quash liability orders made by the Preston Magistrates Court. In the course of its challenges, SBLT made a number of applications for judicial review, two of which were dismissed and declared to be totally without merit by Nicklin J on 21 March 2018 and by Andrew Thomas QC (sitting as a Deputy High Court Judge) on 15 October 2018. SBLT was ordered to pay costs of £1,347.50 by Andrew Thomas QC and when it failed to do so, PCC served a statutory demand in that sum on SBLT on 8 November 2018. Bizarrely, SBLT then applied on 30 November 2018 to set that statutory demand aside. PCC then gave notice of intention to support the Petition on 6 December 2018.
12. SBLT's application to set aside the statutory demand was heard by Deputy ICC Judge Frith on 28 January 2019. At the hearing, SBLT indicated that it would make payment of the £1,347.50 specified in the statutory demand. Deputy ICC Judge Frith then dismissed SBLT's application with an order that SBLT pay costs of £1,400 by 11 February 2019. When that debt was not paid on time, on 13 February 2019 PCC served a further notice of its intention to support LBC's Petition. SBLT then paid PCC's debt on 14 February 2019.
13. On 20 February 2019, SBLT issued a further application ("the Second Application") seeking to vacate the hearing of the Petition and First Application which had been listed for 22 February 2019. The basis for that application was an assertion by SBLT that having received a copy of the court file from Manchester on 7 December 2018 (a fact recorded in the First Application) it had discovered that the filed witness statement of the litigation assistant at LBC's solicitors verifying the Petition had not been signed. SBLT claimed that the consequences of this had to be determined before the determination of its First Application.
14. In response, the litigation assistant at LBC's solicitors produced a witness statement dated 21 February 2019 stating that he was attempting to check with the court whether the filed statement verifying the Petition had not been signed, but if that was the case, it had been an accidental omission on his part. The new witness statement expressly referred to the Petition and the earlier unsigned witness statement and verified that the facts and matters therein were true and that they remained true, save that the Petition debt had now been paid.

The judgment of DJ Obodai

15. The Petition and SBLT's First and Second Applications came before DJ Obodai sitting at the Manchester Civil Justice Centre on 22 February 2019. The application to transfer the Petition to London was not pursued orally by the officer of SBLT who then appeared (Mr. Gregory). Instead he indicated that SBLT essentially had two arguments in support of its application that the Petition should be struck out with costs in favour of SBLT. These were (i) that there was no

evidence of signed versions of the underlying liability orders from the Highbury Corner Magistrates Court before the court in Manchester, and thus there was no proof that any money had been owed, and (ii) that the witness statement verifying the Petition had not been signed. Mr. Gregory asked for an adjournment to conduct further research into the legal consequences of the lack of verification of the Petition.

16. In an *ex tempore* judgment, DJ Obodai referred to the fact that the Petition debt based upon the Liability Orders had been paid by SBLT; she then referred to the fact that although the witness statement verifying the Petition was unsigned, the litigation assistant at LBC's solicitors had provided his new witness statement which did verify the contents of the Petition; and she observed that the point concerning the lack of verification had not been taken at any earlier hearing. The District Judge then also referred to the overriding objective under the CPR of dealing with cases justly and at proportionate cost, and to rule 12.64 of the Insolvency Rules 2016 which provides,

“No insolvency proceedings will be invalidated by any formal defect or any irregularity unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court.”

17. DJ Obodai then held,

“Given that the Petition debt has been paid and given that this case already has had a number of hearings and the point has not been taken before and is taken by the application of yesterday's date, I cannot see any substantial injustice caused by this irregularity. I find, in the circumstances, that I am going to apply Insolvency Rule 12.64 and exercise my discretion to allow reliance upon the witness statement and find that the petition is not invalidated by the formal defect ...

I find nothing in the points raised by Mr. Gregory that the Petition should not have been brought in the first place because there are no liability orders on the file. As [counsel for LBC] says, whatever Mr. Gregory might say in relation to the liability orders, these are sums that have been paid in respect of those orders.

I cannot see the injustice or the impact, nor am I prepared to adjourn to have more court time taken up to have a lengthy argument on something that does not cause any substantial injustice. So on that basis, I am not acceding to the [Second] Application, leaving aside that it was filed late ...

There is nothing further to resolve here other than the issue in relation to costs. I can see no reason why this Petition should not be dismissed today.

....

So [the Second Application] is dismissed. This Petition is not an abuse of process and I have dealt with the point in relation to rule 12.64. It is not a Petition that should be struck out and nor are wasted costs payable on the basis Mr. Gregory put it, which is that the Petition should not have been brought in the first place because there are no liability orders on the court file. These are liability orders that have been paid so the Petition will be dismissed today.”

18. The District Judge then proceeded to award LBC and PCC their costs of the Petition and of appearing to support the Petition. She summarily assessed those costs in the amounts of £6,050 and £2,560 respectively. The District Judge was then asked by counsel for LBC to dismiss the First and Second Applications and to declare that they were totally without merit. Having heard brief submissions, the District Judge stated,

“I do consider the basis of this application, particularly with the timing of it, for all the reasons I stated in my judgment, made by the debtor to be totally without merit and that that should be something that is part of the order and, yes, also that in those circumstances, the case is transferred to a High Court Judge to consider the making of a civil restraint order pursuant to CPR 3.11 and its Practice Direction.”

19. After the conclusion of the hearing, SBLT's solicitors emailed the District Judge and LBC's solicitors requesting that the District Judge reconsider her decision in relation to First and Second Applications. In the event, the District Judge declined to vary her decision and the sealed order which she made recorded that both Applications had been dismissed and declared to be totally without merit.

The submissions on appeal

20. At the hearing before me, Mr. Wolman did not pursue the first point which had been advanced before DJ Obodai that there had been no signed versions of the liability orders filed at court in Manchester. He was right not to do so. Quite apart from the fact that SBLT has never actually disputed that the liability orders were made (and indeed relied on the fact that it had applied to have them set aside), Magistrates Courts do not routinely issue sealed orders in the same way as the High Court or County Court.
21. There is also no requirement under the Insolvency Act or Rules or any other relevant legislation that authenticated versions of such liability orders should be filed if they are to be relied upon as the foundation for a winding up petition. The manner in which the matters relied upon in support of a winding up petition are to be proved is by verification of the petition in accordance with Rule 7.6 of the Insolvency Rules 2016.
22. That leads to the two main issues upon which Mr. Wolman sought permission to appeal the order of DJ Obodai on the Petition, namely (i) that the failure of LBC's solicitor to sign the witness statement verifying the Petition meant that the Petition

was a nullity *ab initio*, and (ii) that DJ Obodai wrongly relied upon rule 12.64 in effect to waive non-compliance with rule 7.6 of the Insolvency Rules 2016.

Was the Petition a nullity?

23. So far as is material, rules 7.6, 7.7 and 7.9 of the Insolvency Rules as regards verification, filing and service of a winding up petition are in the following terms,

“Rule 7.6

- (1) The petition must be verified by a statement of truth.
- (2) Where the petition is in respect of debts due to different creditors then the debt to each creditor must be verified separately.
- (3) A statement of truth which is not contained in or endorsed upon the petition must identify the petition and must contain—
 - (a) identification details for the company;
 - (b) the name of the petitioner; and
 - (c) the name of the court (and hearing centre if applicable) in which the petition is to be presented.
- (4) The statement of truth must be authenticated and dated by or on behalf of the petitioner.

....

Rule 7.7

- (1) The petition must be filed with the court.
- (2) A petition may not be filed unless—
 - (a) a receipt for the deposit payable to the official receiver is produced on presentation of the petition; or
 - (b) the Secretary of State has given notice to the court that the petitioner has made suitable alternative arrangements for the payment of the deposit and that notice has not been revoked.

....

(5) Each copy of the petition must have the seal of the court applied to it, and must be delivered to the petitioner.

Rule 7.9

(1) Where this rule requires the petitioner to serve a copy of the petition on the company or deliver a copy to another person the petitioner must, when filing the petition with the court, file an additional copy with the court for each such person.

(2) Where the petitioner is not the company the petitioner must serve a sealed copy of the petition on the company in accordance with Schedule 4.”

24. As rule 7.6(3) makes clear, the Insolvency Rules require that a winding up petition must either be verified by a statement of truth endorsed upon it or in a separate witness statement. If the verification is endorsed on the petition, it will obviously be done prior to the petition being filed. But if it is done by way of a separate witness statement, there is no express requirement as to when that witness statement should be signed. Moreover, and in contrast to the express requirement in rule 7.7(2) for a receipt for the deposit payable to the official receiver to be produced before the petition is filed, there is no requirement for a separate witness statement verifying the petition to be produced to the court before the petition is filed. Nor is there any requirement under rule 7.9 or Schedule 4 for a separate witness statement verifying the petition to be served on the company with the petition.
25. These considerations strongly suggest that a petition will not be rendered a nullity by the absence of verification by a separate witness statement at the time at which the petition is filed.
26. That conclusion is also supported by consideration of the purpose for which verification is required. The obvious purpose of verification by a statement of truth of the matters set out in a petition is to provide the court at the hearing of the petition with the evidence upon which to decide whether or not there are grounds to make a winding up order. But until that time, unless an application is made to strike out or prevent prosecution of the petition, there is no obvious occasion upon which the court would have to consider the evidence in support of the petition. In saying that, I am in no way suggesting that verification is not a most important requirement of the Insolvency Rules, and I find it difficult to conceive of circumstances in which the court would think it appropriate to make a winding up order if the petition had not been verified by a statement of truth. But it does not seem to me that the absence of verification makes the petition invalid *ab initio*.
27. That conclusion is also consistent with the only authority cited to me on the subject, namely Re The Western Benefit Building Society (1864) 33 Beav 368. The relevant court orders made under the Companies Act 1862 required the affidavit verifying a winding up petition to be sworn *after* presentation of the petition. An order for the winding up of the company had been made, but it was

then discovered that the affidavit had inadvertently been sworn *before* presentation of the petition. Romilly MR held that the affidavit had to be resworn, and that the winding-up order which had been made had to be dated subsequently. However, it is clear that the defect was not treated as invalidating the petition itself so as to require a fresh petition to be issued and the process started again.

Rule 12.64

28. As his secondary argument, Mr. Wolman contended that even if the Petition was not invalid *ab initio*, DJ Obodai erred in finding that no substantial injustice had been caused to SBLT by the failure to verify the Petition. He contended that it was unjust that SBLT had paid the Petition debt in the mistaken belief, induced by an implicit misrepresentation by LBC, that it had been properly verified. He said that if SBLT had known that the Petition had not been verified in accordance with rule 7.6, it would not have paid the debt but would have applied for advertisement to be restrained and for the Petition to be struck out on this ground.
29. DJ Obodai was not informed of SBLT's unsuccessful attempt to restrain advertisement, nor was Mr. Wolman's argument made to DJ Obodai. The District Judge essentially approached matters on the straightforward basis that SBLT had chosen to pay the Petition debt, and that LBC's accidental failure to verify the Petition had therefore made no difference to the course that SBLT had adopted.
30. On the basis of the submissions made to DJ Obodai, I think her approach was correct and her finding that SBLT had suffered no substantial injustice was unimpeachable. The point made about the lack of signed liability orders on the court file was a bad point, and there was no suggestion of any other injustice caused to SBLT. As such, her decision that rule 12.64 applied and that the Petition was not invalidated was plainly correct. So too was her decision to dismiss the Petition with costs on the basis that LBC had been paid after presentation, rather than to strike it out as an abuse of process as requested by SBLT.
31. I also do not accept Mr. Wolman's submissions in any event. I cannot see how SBLT was prejudiced by an accidental omission to verify the Petition in circumstances in which (it now appears) SBLT did apply to restrain advertisement of the Petition before making payment on the basis that SBLT had challenged the liability orders and hence that the Petition debt was disputed, but failed to persuade HHJ Bird to grant an injunction.
32. Although it would seem that HHJ Bird was unaware on 5 November 2018 of the fact that the Petition had not then been verified, it would appear from counsel's skeleton argument for that application that HHJ Bird was addressed on the details of SBLT's case on the underlying dispute as to the liability orders. Although I was not provided by SBLT with a transcript or note of HHJ Bird's judgment, I believe that he must have concluded that SBLT's arguments did not have sufficient substance so as to make the Petition an abuse of process or to justify granting an injunction. As such, if the lack of a signature on the witness statement had been noticed and the point had been raised, I see no reason to believe that HHJ Bird would have thought that this was anything other than a formal defect which could easily and properly be remedied by a witness statement being signed,

as indeed it was when the matter was belatedly raised on the eve of the hearing before DJ Obodai. SBLT would then have been in precisely the same position of having to choose either to pay the Petition debt to avoid advertisement, or to allow the Petition to proceed to a hearing.

33. As it was, however, Mr. Wolman's argument was not put to DJ Obodai, who was not told that SBLT had made the application to HHJ Bird. Since I do not consider the argument to be well founded, I do not consider that it would be appropriate to permit it to be raised now, or that it justifies giving permission to appeal.

Were the First and Second Applications totally without merit?

34. As I have indicated, the First Application was issued after the Petition debt had been paid. It had asked for the transfer of the Petition to London, that it be struck out on the basis that it was an abuse of process because the debt was disputed, and for an order that LBC pay SBLT's costs.
35. On the basis of the way in which the matter was presented to DJ Obodai on 22 February 2019, I can well understand why she took the view that the First Application was totally without merit. As far as the District Judge was aware, SBLT had chosen to pay the Petition debt after the Petition had been presented, but the First Application sought to raise, after the event, arguments as to why SBLT should not have had to do so, and asked for a lengthy hearing for that purpose in London. In my view the District Judge rightly took the view that it would be inappropriate for significant further court time and costs to be incurred, essentially in relation to the question of the limited costs that had been incurred on the Petition up to the point at which SBLT had paid the debt claimed.
36. I also do not think that the District Judge's opinion of the total lack of merit of the First Application would in any way have been improved had she been told, as now appears, that before launching the First Application, SBLT had already applied to HHJ Bird for an injunction to restrain advertisement of the Petition on the grounds that the debt was disputed, but had failed.
37. As I have indicated, the Second Application was issued shortly before the hearing on 22 February 2019 and sought an adjournment of the Petition to enable further research to be done by SBLT into the legal consequences of the failure to verify the Petition. Again, in circumstances in which the Petition Debt had been paid and all that remained in practical terms was the question of costs, I entirely understand why the District Judge considered that such application was totally without merit. The point was not a complex one, and a further adjournment, incurring more costs and wasting the court time that had been set aside for the hearing on 22 February 2019, would have been entirely inappropriate.
38. The District Judge was also right to take into account the fact that the Second Application was issued only on the eve of the hearing fixed for 22 February 2019. In that regard, DJ Obodai's view of the lack of merits of the application would not have been improved had she been informed – as now appears – that a representative of SBLT had in fact made a complaint to the Solicitors Regulation Authority as early as 11 December 2018, expressly complaining about the lack of verification of the Petition. As it is, however, even on the basis on which the

matter was put to DJ Obodai, I agree with her determination that the Second Application was totally without merit.

Conclusion

39. For those reasons, I do not consider that any of the points raised by SBLT have any realistic prospects of success on appeal. I will therefore refuse SBLT permission to appeal.
40. It remains for me to deal with questions of the costs of the applications for permission to appeal and the issue of whether to make a civil restraint order against SBLT. I shall do so at an adjourned hearing on 18 December 2019 at which I will also deal with any other consequential matters. I shall extend any relevant time periods until after that hearing.