

Claimant
R.J.Dougans
1st Witness Statement
"RJD1"
July 2016

Claim No.

IN THE COUNTY COURT AT SWANSEA
SWANSEA CIVIL JUSTICE CENTRE

BETWEEN:

(1) Dr. Andrew Lewis
(2) Melanie Byng

Claimants

-and-

(1) Stephane Paris
(2) Angel Garden

Defendants

WITNESS STATEMENT OF ROBERT JAMES DOUGANS

I, ROBERT JAMES DOUGANS of 88, Wood Street, London, EC2V 7AJ WILL SAY AS FOLLOWS:

Introduction

1. I am a Solicitor of the Senior Court of Justice of England and Wales, and am a partner of the firm Bryan Cave at the above address. I have the conduct of this matter on behalf of the Dr Andrew Lewis and Mrs Melanie Byng (the "Creditors").
2. The facts and matters deposed to herein are from my own knowledge, save where I indicate otherwise. Insofar as they are within my own knowledge, the facts and matters deposed are true to the best of my knowledge and belief. Where I rely upon matters outside my own knowledge, the sources I rely upon for my information on which my belief is based are the persons or documents to which I refer, or both.

3. A paginated bundle of copy documents entitled Exhibit “RJD1” is attached to, and forms part of, this witness statement. References to pages in square brackets are references to pages of RJD1, in that [3] is a reference to page 3 of RJD1.
4. I am making this witness statement in support of the Creditors’ Claim for an order to enforce by way of sale a charge the Creditors’ have over the freehold property known as 9, Lon Bryngwyn, Sketty, Swansea, SA2 0TX and registered at Her Majesty's Land Registry under Title No. WA315308 (the “Property”)

Background

5. On 1 November 2013 Mr. Paris and Ms Garden (the “Debtors”), who are a married couple with 3 children, issued claim number 3SA90091 in the Queen’s Bench Division against Dr. Lewis and Mrs. Byng. This claim made numerous allegations against Dr. Lewis and Mrs. Byng but the core of the claim was in libel and I shall accordingly refer to this as the “Libel Claim”. The Libel Claim went to trial in Swansea before H.H. Judge Seys-Llewellyn Q.C. on 16 March 2015 and on 14 July 2015 the learned judge gave judgment for Dr. Lewis and Mrs. Byng. A copy of the judgment is at [1-59]. I do not propose to discuss the progress of the case, or the judgment, in any detail for reasons of proportionality but sections of the judgment may be brought to the Court’s attention at any hearing.
6. Subsequently, on 6 August 2015, the judge made the order at [60-61] in which he ordered that Mr. Paris and Ms Garden pay Dr. Lewis and Mrs. Byng a sum of £220,000 by 8 February 2016 and a further payment of £19,900 by no later than 7 August 2016¹ in respect of their legal costs. It was agreed that this delay of six months would be put in place to give Mr. Paris and Ms Garden time to sell the Property themselves and to avoid running up further legal costs at their request: *“we respectfully request that we would prefer to deal with the sale of the property ourselves. We have experience in these matters and feel confident that we would get the best price for this property, in a timely manner”* see [62]. To the best of my knowledge they have not sold the Property to date. None of the sums due have been paid to Dr. Lewis and Mrs. Byng.

¹ There is a typographical error in the Order which states that the second payment must be made by 7 August 2015, not 2016. The correspondence at [63] shows the parties were aware of this error at the time the Order was made..

7. Mr. Paris and Ms Garden applied for permission to appeal and for a stay.

7.1 On 15 January 2016 Lord Justice Floyd refused Mr. Paris and Ms Garden's application on paper. A copy of the learned Lord Justice's order is at [64].

7.2 On 23 March 2016 Lord Justice Simon refused Mr. Paris and Ms Garden's renewed application at an oral hearing.

Pursuant to section 54(4) of the Access to Justice Act 1999 no further appeal is possible. H.H. Judge Seys-Llewellyn's order dated 6 August 2015 therefore stands.

8. On 9 February 2016 Dr. Lewis and Mrs. Byng applied for a charging order over the Property. A copy of the application is at [65-67]. Of particular note is that Dr. Lewis and Mrs. Byng asked that any application for a final charging order not be heard until 15 March 2016, being the date upon which Mr. Paris and Ms Garden's application for permission to appeal was due to be heard².

8.1 On 10 February 2016 District Judge Evans made an Interim Charging Order over the Property, and listed the hearing for the Final Charging Order on 15 April 2016. A copy of the order is at [68-69].

8.2 Dr. Lewis and Mrs. Byng applied to register the Interim Charging Order at H.M. Land Registry. An office copy showing this entry is at [70-73].

8.3 On 6 April 2016 District Judge P. Llewelyn made a Final Charging Order over the Property. A copy of the Final Charging Order is at [74-75].

8.4 Accordingly the Property stands charged with the payment to the Creditors of the sum of £220,000 plus interest and costs.

9. As at 15 July 2016 there is due to the Creditors under the Charging Order the sum of £220,000 plus £246 for costs plus statutory interest in the sum of £7,645.90 and accruing at £48.09 per day.

10. The title to the Property is registered at the Land Registry under Title No. WA315308.

² Given the hearing date for the Final Charging Order was listed for 15 April 2016 my firm did not write to this Court to inform it of the revised date for the hearing in the Court of Appeal as a decision would still have been made before this Court was asked to make a Final Charging Order. No discourtesy was intended.

Office copies of the entries on the register at [72-73] show that the Debtors are the proprietors of the Property with a freehold estate.

11. So far as is known to the Creditors no other creditors have a prior charge or other security over the Property. In particular, the Property is not subject to any mortgage or similar charge.
12. The Debtors instructed Morgan Jones Estates & Lettings, a firm of estate agents in Swansea, to value the Property. To that end I note that the Property is one of many similar houses in the area and ought therefore be able to be valued with some precision. At [76] is a copy of an email between Mr Paris and Mr J. Maskell of Morgan Jones which advises that an estimate of the price which would be obtained for the Property on sale is £220,000.
13. To the best of my knowledge the only persons in possession of the Property are the Debtors and their 3 children.

The Judgment Debt

The Position Of Dr. Lewis and Mrs. Byng

14. Dr. Lewis and Mrs. Byng were sued for libel. It should be noted that Mr. Paris and Ms Garden's initial claim included an application for a mandatory injunction. It was therefore reasonable – indeed imperative - for them to instruct lawyers. Dr. Lewis works as a business consultant. Mrs. Byng is a homemaker. Both own their own homes, subject to mortgages. Whilst neither of them are impecunious, they would not have been able to fund their defence on a private paying basis. Bryan Cave and counsel (Mr. Jonathan Price) accordingly acted on a CFA. There were 3 interim hearings, and a trial lasting 5 days. There was a significant amount of disclosure with the Court bundles reaching 26 volumes.
15. On 1 August 2014 HHJ Vosper Q.C. approved Dr. Lewis and Mrs. Byng's costs budget in the Libel Claim. With the permission of the Court, the Creditors filed a revised costs budget on 15 August 2016 to take into account the late service of the Debtors' reply. A copy is at [77-85] and the total (excluding uplift and VAT) was £131,423.14. Applying a 100% uplift (as is usual in a libel claim if a litigant is successful at trial) Mr. Paris and Ms Garden therefore knew (or ought to have known) that they faced a potential costs

liability of at least £260,000 plus VAT if their claim failed at trial.

16. I also note that whilst Mr. Paris and Ms Garden commenced the Libel Claim as litigants in person, they instructed Douglas-Jones & Mercer as their solicitors on 7 March 2014 and that firm continued on the record until 15 January 2015. They also instructed counsel from specialist media sets. Douglas-Jones & Mercer certainly acted on a CFA; we infer that their counsel may have acted on a private-payment basis. At [86-90] we attach a copy of their costs budget dated 12 June 2016 which was approved by HHJ Vosper QC. The budget totals £67,868.80. Assuming that a 100% uplift would have been sought at least on the solicitors' fees if Mr. Paris and Ms Garden were successful at trial, they would have sought to recover over £135,000 plus VAT from Dr. Lewis and Mrs. Byng, as well as damages.
17. Therefore in the event that Dr Lewis and Mrs Byng were unsuccessful in defending the Libel Claim they are likely to have been required to sell their family homes to meet the damages and costs orders made against them. Both sides to the action ought to have been fully aware of the risk they were facing.
18. Having successfully defeated Mr. Paris and Ms Garden's claim, Dr. Lewis and Mrs. Byng are now liable to pay their own lawyers' fees under the terms of the CFA's they entered into. Unless they can recover these sums from Mr. Paris and Ms Garden they face hardship themselves.

The Conduct Of Mr. Paris and Ms Garden

19. I appreciate that the Court may have some sympathy with persons who commence litigation only to find that the dynamic of costs prevents settlement and forces the litigants into a position where one party or the other faces ruin. I submit that this is not such a case. Throughout the Libel Claim Dr. Lewis and Mrs. Byng made continual offers to settle the case either on a "walkaway" basis or with Mr. Paris and Ms Garden making a limited contribution to their costs.

19.1 From the issue of proceedings a number of offers to settle the claim on a "walkaway" basis were made. After an interim costs order was made in favour of Dr. Lewis and Mrs. Byng on 25 March 2014 these offers were repeated. Copies of this correspondence are at [91-100].

- 19.2 A mediation took place on 16 October 2014. Following that mediation Dr. Lewis and Mrs. Byng offered to settle the case on a “walkaway” basis, removing posts from the internet. Extensive correspondence followed until January 2015 with Dr. Lewis and Mrs. Byng essentially repeating this offer and Mr. Paris and Ms Garden demanding further clarifications and apologies, which Dr. Lewis and Mrs. Byng did not feel able to give, although they made numerous counter-offers. Copies of the correspondence are at [101-110].
- 19.3 On 13 January 2015 Douglas-Jones & Mercer sent the letter at [111-118] offering settlement terms. The letter was sent by fax at 9.15 (and not sent by email) and did not reach me until later. It set a deadline of 4.30 that day. Dr. Lewis was travelling and could not be reached until after the deadline. At 11.20 on 15 January 2015 Dr. Lewis and Mrs. Byng accepted the offer and my firm sent Mr. Paris and Ms Garden a signed consent order. Mr. Paris and Ms Garden insisted that their offer had lapsed and refused to bring an end to their case. Copies are at [118-125].
- 19.4 On Thursday 12 March 2015 – when trial was to begin on Monday 16 March 2015 – Dr. Lewis and Mrs. Byng invited Mr. Paris and Ms Garden to discontinue their claim, with Dr. Lewis and Mrs. Byng limiting the costs they would seek to recover to £30,000 with nothing more sought for interim costs orders, see correspondence at [126-127]. That was obviously a sum far below the legal costs actually incurred by Dr. Lewis and Mrs. Byng at that point. No response was received.
20. From the above I submit that it is clear that Mr. Paris and Ms Garden had ample opportunity to compromise the Libel Claim without being subject to substantial legal costs. They chose not to do so. They must be seen as the architects of their own misfortunes.

The Courts’ Discretion

21. The Court will wish to weigh up the rights of the Creditors against the rights of the Debtors in these proceedings. Whilst the Court may well have sympathy for the Debtors and their children, when the background to this matter is considered, as set out above, the Debtors’ were fully aware of the risk they were placing on their family home. They were afforded ample opportunity to avoid the Judgment debt, yet chose to continue to

trial in respect of the Libel Action. It is understood that the Debtors have already sought advice and assistance from the Citizen's Advice Bureau in relation to their housing options, and will again be able to seek support and advice following an order for sale to ensure their continued living situation.

22. It does not appear that the Judgment debt is likely to be paid, unless there is an order for Sale. The Debtors have never put forward any other option or asset which could be utilised to meet the Judgment debt, Therefore in order for the debt to be paid, an order for sale is necessary and the only viable option. The Judgment debt is likely to be met as a result of an order for sale and this is the only realistic option available.
23. Moreover, Mr. Paris and Ms Garden have, to date, been given almost a year to sell the Property, and have failed to do so. They have also failed to make any alternative proposals for payment. If an Order for Sale is not granted there does not appear to be any realistic prospect of the Judgment debt being paid, and the Debtors will face hardship themselves in the event that their legal costs are not met.

The Debtors do not appear to object to an Order for Sale

24. Immediately following the Final Charging Order and the final disposal of the Debtors' application for permission to appeal, the Debtors were contacted in order to understand their proposals for satisfying the Judgment Debt. The Debtors indicated that they would be willing to transfer the Property, their only asset, directly to the Creditors as a final settlement but that such a transfer should occur after the GCSE exams of their eldest child and after the possible surgery of a family member in June 2016 . The Creditors were happy to acquiesce to this request, and provided the Debtors with a draft order to this effect on 4 April 2016, see correspondence at [128-133].
25. The Debtors subsequently refused to sign the consent order. However, in recent correspondence the Debtors appear to be willing to consent to an order for sale on the condition that it takes place after 31 August 2016 in full and final settlement of the Judgment Debt (see correspondence at [134-141]). The Creditors remain willing to accept the proceeds of the sale of the home as full and final settlement of the sums owing pursuant to the order of HHJ Seys Llewelyn dated 6 August 2016.
26. As a result, the Creditors respectfully request that the Court orders the sale of the Property in the terms of the attached draft order.

Statement of Truth

27. I believe the facts stated in this witness statement to be true.

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Robert James Dougans

24th July 2016