

12 May 2020

The court recently handed down judgment in a strike out/summary judgment application brought by the Defendant in **Raja v McMillan**. Robert-Jan Temmink QC appeared for the successful Claimant.

The facts of the case can be summarised as follows. The Claimant, Ms Raja, purchased a flat (the “Flat”) in the Signal Building in London, SE1 (the “Building”). Shortly thereafter the London Borough of Southwark pursued her and other flat owners in the building for breaches of the planning conditions, in particular the affordable housing obligation (“AHO”) imposed on the Building. Ms Raja claims that she was misled into buying the Flat by being falsely told that it was free of the AHO. Her claim is for conspiracy to injure by unlawful means and/or for deceit as a joint tortfeasor. The alleged conspirators/joint tortfeasors include the Defendant (Mr McMillan), various corporate alter-egos for the Defendant, and a registered housing association. In short, it is alleged that the Defendant attempted to circumvent the AHO condition imposed by the London Borough of Southwark on the Flat and did so in combination with a housing association with which he is closely connected and which he funded. The Defendant effectively acquired the entirety of the interest in the affordable housing units within the Building at the outset through the use of a series of “tenants” who never occupied the flats in the Building, and who purchased the flats with funds provided by the Defendant or one of his alter-egos. The Defendant retained the beneficial interest in the properties throughout a series of transactions which purported to satisfy and extinguish the AHO requirement. One of the flats was then sold to Ms Raja.

The case gives rise to a number of interesting and important issues of law, including (a) whether a conspiracy is possible between an individual and his alter egos; and (b) the threshold requirement for intention to harm in unlawful means conspiracy.

The Defendant applied for strike out or summary judgment on the basis that the Claimant’s claim was bound to fail on the facts and the law. The application was dismissed (as was the Defendant’s application for permission to appeal).

As to the issues of fact the Judge held that the Claimant’s claim was not bound to fail especially taking into account further evidence that may be available at trial. As to the issues of law the Judge was not persuaded by the Defendant’s arguments.

In relation to the alter-ego point, the Defendant argued that the claim in conspiracy was bound to fail because it was a logical impossibility for the Defendant to conspire (or to be joint tortfeasor) with himself. The Judge did not find this argument persuasive stating that such analysis ignored the separate legal personality of companies “[i]f a director of a one-man company can contract with his company, then it is difficult to see why he cannot conspire with it” (Judgment, paragraph 34).

As to the requisite intention to cause harm, the Defendant argued (among other things) that, in order to show an intention to harm, the Claimant would need to show that the harm is either the desired end or the necessary means to the desired end of the conspiracy and, further, that intention to harm the Claimant cannot be the cause of the combination unless the Defendant entered the conspiracy believing that the Claimant would necessarily suffer loss as a result of its implementation. The Judge was not persuaded by the Defendant’s arguments stating (among other things) that “intent to harm” in an unlawful means conspiracy may not impose an especially demanding requirement. It certainly does not come close to the requirement in lawful means conspiracy cases where the intention to harm must be the predominant intention of the conspiracy.” (Judgment, paragraph 57). The Judge also expressly recognised the difficulties in this area of the law, which will be argued fully at trial.

Though the Judge clearly did not consider that the issues of law favoured the Defendant, she concluded that to the extent that the underlying legal principles were genuinely contested, such disputes should be determined at trial, where the Court would have the benefit of the full facts and context before it.

In the meantime, the judgment provides a careful and reasoned analysis of the law on intention in conspiracy claims and some interesting comments on the nature of conspiracy in small companies.

Liisa Lahti practices in commercial litigation and arbitration from Quadrant Chambers in London, particularly specialising

in fraud and banking work. She is recommended in the legal directories for having “an incredible work ethic and a ferocious intellect. She distils the most complex legal issues into an easy-to-digest format”.

Robert-Jan Temmink QC is known internationally and in the UK for his work on civil fraud, commercial and chancery cases. He is listed as a leading silk in the legal directories which recommend him as a “formidable advocate” and describe his delivery of complicated facts and law as “exceptional”.

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Robert-Jan Temmink QC



“He has the presence and stature to make judges stop and listen.” (Chambers & Partners UK, 2020)

Robert has a wide-ranging and international practice in commercial and chancery law. He is known for being a talented and intellectually-agile advocate equally at home in fraud and financial services cases as in aviation and shipping matters. He has a strong practice in construction, energy and infrastructure disputes and is often asked to advise and act in complex insolvency and cross-border actions.

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“Liisa has an incredible work ethic and a ferocious intellect. She distils the most complex legal issues into an easy-to-digest format.” (Chambers & Partners UK, 2020)

Liisa Lahti has a broad commercial practice covering banking & finance, civil fraud, international trade, shipping and insurance. Before coming to the Bar Liisa qualified as a solicitor at Freshfields Bruckhaus Deringer. Liisa has also been seconded in-house at an international group P&I Club, the General Counsel's Division of the (then) Financial Services Authority and a leading international law firm. Liisa is ranked as an ‘Leading Junior’ in Banking & Finance and Commercial Dispute Resolution in Chambers UK 2020 and as a ‘Leading Junior’ in Banking & Finance in Legal 500 2020.

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