



Neutral Citation No: [2024] EWHC 1249 (KB)

Case No: KB-2023-004679

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Date: 3<sup>rd</sup> May 2024

**Before:**

**THE HONOURABLE MRS JUSTICE COLLINS RICE DBE CB**

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**Between:**

**PERSEUS VENTURES LIMITED**

**Applicant**

**- and -**

**(1) DAVID FOSKETT**

**(2) RICHARD ALFORD**

**(3) EMMA JANE ATKINSON**

**(4) JOHN PATRICK DUFFY**

**(5) BARCLAYS BANK (UK) LTD**

**Respondents**

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**Mr Martin Walsh** was heard provisionally **In Person** by videolink for the **Applicant**  
**Mr James McWilliams** of Counsel for the **Respondents**

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**APPROVED JUDGMENT**

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## MRS JUSTICE COLLINS RICE:

### Preliminary

1. Mr Martin Walsh told me this morning that he is a director, and the sole beneficial owner, of Perseus Ventures Limited, and that that company is the intended claimant in proceedings he has a view to issuing shortly.
2. At the start of today's hearing, I asked for and obtained from him undertakings that he would, promptly after the hearing, file and serve a witness statement setting out these facts about the governance of the intended claimant firm and Mr Walsh's authorisation to represent it. That was because *evidence* was required that there were no other interests in the company which might object to his representing it. I explained that those undertakings were an essential pre-requisite for my hearing him as a representative of the intended claimant today, and for any consideration of the exercise of the powers of the court on this application.
3. I explained that failure to file and serve that witness statement may be relevant not only for today's purposes, but also in relation to the proceedings he intends to bring.
4. I agreed to hear Mr Walsh by videolink from Hong Kong, on the basis of these undertakings, and undertakings he had previously given as to the terms of use on which he would be sent the link.

### Background

5. Mr Walsh and/or Perseus Ventures is in dispute with Barclay's Bank over a leasehold property. The Bank has a charge over that property, to secure a loan facility it says was the subject of a personal guarantee given by Mr Walsh, and which it says he has failed to deliver on. The Bank has appointed receivers with powers in relation to the property.
6. Mr Walsh is outraged by what he tells me is the conduct of the receivers. He says they have misconducted themselves in this role. He makes very strong allegations indeed of misconduct by them of a criminal or quasi-criminal nature, including fraud. He says they have broken into his property unlawfully, and unlawfully excluded him from it. He seeks remedies in those circumstances.
7. In pre-action correspondence in August of 2023 he set out some details of a claim he said he intended to bring. The proposed defendants were to be the Bank, the receivers and the receivers' solicitors. He told me he was hoping then that matters would be resolved without litigation. But if Mr Walsh's allegations are strongly and vehemently expressed, which they are, they are as firmly resisted. The prospect of an amicable settlement looked, and still look, extremely unlikely.
8. Mr Walsh did not, however, issue any claim at that point. Instead, in November 2023, he applied to the High Court for two things: first, an order for specific disclosure under Civil Procedure Rule 31.12 of certain information relating to the leases on the property;

and, second, an order for a declaration further to Civil Procedure Rule 20.2(1)(b) as to the fiduciary duties owed by the receivers.

9. Cotter J dealt with this application on the papers. He did so by making an order, dated 15<sup>th</sup> December 2023, which itself did two things. First, it struck out the request for specific disclosure as having been misconceived. Since this was a pre-claim application, the Judge considered it could only have been brought under Civil Procedure Rule 31.16, which sets out a different test, and that Mr Walsh's application did not address, or apparently meet, that test.
10. And second, the order noted that (a) Mr Walsh was a Hong Kong resident and (b) no application further to Civil Procedure Rule 39.6 had been made for permission for him to represent a company in person. In these circumstances, the order provided for Mr Walsh to file and serve a statement – in effect an application for permission to be heard as a representative of the intended claimant company – as a precondition for the application for a declaration being considered. That had to be done by 4pm on 5<sup>th</sup> January 2024. Failure to comply was expressed by way of an 'unless' clause to result in that application being automatically struck out also.
11. Mr Walsh applied on 17<sup>th</sup> December 2023 for the order of Cotter J to be set aside, having been made on the papers in his absence. He also (a) applies for pre-action disclosure under Civil Procedure Rule 31.16 of the material he previously sought; (b) renews his application for pre-action declarations; and (c) seeks a pre-action injunction restraining the receivers in their dealings with the disputed premises.

### **Consideration**

#### *(a) Application to set aside the order of Cotter J*

12. For the reasons which follow I am not going to set aside the order of Cotter J. But for reasons which further follow, that may not make much material difference to the practical outcome.
13. Cotter J was quite right to hold that Mr Walsh had asked for the wrong sort of disclosure. He was quite right to strike that application out. Mr Walsh has made the correct application now, however. Both sides addressed me this morning on the merits of that application and I have considered them in substance, as I set out below. So there is nothing more to be achieved by setting aside Cotter J's order in this respect in any event.
14. Secondly, as I understand it, Mr Walsh did try to file and serve a statement as directed by the 'unless' clause of Cotter J's order. But (a) he did not follow the rules in the Civil Procedure Rules about effective service and (b) he did not address the test set out in Civil Procedure Rule 39.6 anyway. However, again, firstly we have dealt with that latter point for now by way of his undertaking given this morning, and secondly, although his application to Cotter J for a declaration properly stands struck out in the circumstances, again I received submissions from both sides on its merits anyway and have considered those merits. So there is nothing more to be achieved by setting aside Cotter J's order in this respect either.

#### *(b) Applications for pre-claim remedies*

15. Mr Walsh has still not issued any claim. But he says he is about to.
16. The three forms of relief which Mr Walsh now seeks – that is to say, disclosure, declaration and injunction – more usually follow the issue of a claim than precede it. The rules of court and the decided caselaw restrict the circumstances in which pre-claim relief of this sort will be granted. There are good reasons for that. The point at which a claim is issued is the point at which a claimant formally defines the case he wants to make and begins the process of putting a defendant under clear and specific obligations to respond. The claimant’s pleadings define the case that a court is ultimately asked to look at. So a court has to be very careful about the extent to which it will look into the merits of a claimant’s case and/or put any proposed defendants under legal duties, before a claim is clearly under way and everyone can see clearly exactly what it is about.
17. The reason Mr Walsh has given for not issuing his claim so far – in addition to his apparently unfounded hope that the matter might be resolved otherwise than by litigation – centre on what he says is his desire to *quantify* the claim and to put a precise figure on the damages it will ultimately seek. But that is not a good reason to delay issuing a claim. Precision as to quantum is not expected at the initial stage. It is very usual for the quantification of a claim to be refined through the processes of disclosure and evidence after a claim is made and a defence filed.
18. Mr Walsh told me this morning that he now stands ready, or nearly ready, to issue and serve Perseus’s claim. If so advised, that is the obvious next step. That way he can put the proposed defendants fully to the challenge he wants to make and seek to vindicate all the legal rights that he can establish. Rules of court provide for directions, disclosure and remedies to follow in due course.
19. I am not satisfied that Mr Walsh has given me any good reason to act *now*, before he has issued his claim. There are two points about that. First, on the materials before me this morning I can see no case or evidence of immediate urgency. I can see that the situation of which he complains is ongoing. But Mr Walsh tells me that the last interference with his property of which he particularly complains happened last December. I have not been told anything material about possible developments in the immediate future.
20. And secondly, as I have said, the powers of the court, for good reasons of fairness, are more restricted now than they would be after a claim has been issued. I cannot adjudicate today on the full merits of the case Mr Walsh might in due course want to make. My role now is a strictly limited one.
21. Turning to the specifics of the relief sought, I can order pre-action disclosure only if the test set out in Civil Procedure Rule 31.16 is demonstrably satisfied. I am not persuaded that it is. Ordering disclosure of the information sought about the leases could not possibly, so far as I can see, dispose of this intended claim, avoid proceedings or save costs. Mr Walsh does not suggest it could. The claim he says he has in contemplation extends for example to fraud, negligence and breach of legal duties. I can see that details about the leases could be *relevant* to a claim of this sort, but not that they could *avoid* or *dispose of* such a claim. The usual course of events would be that this material and any other to which the claimant is entitled would be disclosed on a mutual basis at the right time after the pleadings have been set out so as to define the dispute.

22. In these circumstances, I am not persuaded either that this disclosure is necessary *now* in order to enable Mr Walsh to bring proceedings, nor am I satisfied, given the wording of CPR 31.16, I even have the power to make the order he seeks. If I do, I am entirely satisfied that the test for exercising it is not met.
23. I do have a broader discretion, further to Civil Procedure Rule 25.1(1)(b), to order pre-trial declaratory relief. But, further to Civil Procedure Rule 25.2(2)(b), it cannot be exercised unless the matter is urgent or it is otherwise in the interests of justice to do so. The case for urgency – that is, the case for not waiting until the claim is issued – is simply not apparent. A pre-claim declaration about receivers’ fiduciary duties is not *necessary* to enable Mr Walsh to bring the claim he says he intends. It could not in any event be made without a degree of premature investigation into the facts and merits of the matter. I cannot see that it serves any helpful purpose to either party to attempt to adjudicate on, so as to declare, the fiduciary duties of the receivers before the claim is even brought.
24. And third, as regards injunctive relief, I return to the point that this is dependent on the demonstration of a case for real urgency for action *now*. It is not yet clear to me in any event exactly on what legal basis, given that no challenge to the *appointment* of receivers appears to be in contemplation, it is said to be possible to curtail their legal powers to deal with the property – in other words it is not clear whether there is a *relevant* legal issue affecting the *powers* of the receivers which would ultimately fall to be tried in a future claim. Nor is a case put forward that damages would not ultimately be an adequate remedy in any event. Mr Walsh and/or Perseus offer no cross-undertakings.
25. In all these circumstances, the issue today seems to be largely about timing. There have to be good reasons for a court to be able to grant relief on any of these matters *today* when Mr Walsh, as he tells me, is about to bring his claim and trigger normal litigation procedures for dealing with them. That is how Mr Walsh needs to bring his outrage properly before a court. That is how legal rights are tested and vindicated in our system. Then matters can be looked at in the round and appropriate directions given, rather than trying to deal in substance with isolated issues at a point where there are only limited powers for a court to act and where there is no demonstrable case of urgency for doing so pre-claim.

### Decision

26. I am refusing Mr Walsh’s applications for these reasons.
27. The respondents apply for me to certify those applications as being ‘totally without merit’. Let me be very clear indeed about this. That has nothing whatever to do with the rights and wrongs of any future claim by Perseus. It has nothing whatever to do with what Mr Walsh says the respondents or any of them may or may not have done wrong. It is a label that courts attach to applications which really should never have been brought in the first place.
28. Today’s applications were brought when (a) Mr Walsh says he is about to issue Perseus’s claim and (b) I have been given no good reason as to why that claim has not been issued a good while before now anyway. The applications did not comply with the rules of court or properly address the tests they set out. Those rules, as I keep

emphasising, are there to ensure justice to both sides. In that limited sense the applications before me were without merit.

29. That has no direct consequences for the bringing of a proper claim by Perseus in accordance with the rules of litigation. Any such claim would of course proceed fairly towards an adjudication of its merits in the normal way. I emphasise again that I say nothing today about the ultimate merits of any claim Perseus may bring. That is no part of my task today and I am not in a position properly to do so.
30. What certifying an application as ‘totally without merit’ does mean, however, is that if Mr Walsh/Perseus persists in trying to engage the powers of the High Court otherwise than with a claim properly on foot he may ultimately find himself restrained from doing so unless a court has first given its express permission.
31. I conclude this short judgment by saying that in these circumstances Mr Walsh might be well advised to consider getting legal advice to help him ensure that he, and Perseus, make the right procedural choices consistent with any fair and proper pursuit of justice they may have in mind.

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**(This Judgment has been approved by the Judge.)**