



Neutral Citation Number: [2025] EWHC 1335 (Fam)

Case No: FD21F00057 &  
PT-2020-000097

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**  
**(Following Transfer from the Chancery Division)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 23 May 2025

**Before :**

**MR JUSTICE KEEHAN**

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**Between :**

**JT**

**Claimant**

**- and -**

**(1) RL**  
**(2) AL**

**Defendants**

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**The Claimant appeared in person assisted by a McKenzie Friend, Ms Hazeldine Janet Bazley KC and Timothy Sherwin (instructed by A P Solicitors) for the First Defendant**

Hearing date: 25 March 2025  
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**JUDGMENT**

This judgment was handed down remotely at 10.30am on 23 May 2025 by circulation to the parties or their representatives by e-mail and by release to The National Archives on 5 June 2025.

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

**Mr Justice Keehan :**

Introduction

1. On 31 January 2020 the Claimant, JT, (whom I shall refer to as ‘the mother’) issued a claim in the Chancery Division against the Defendants, RL, (whom I shall refer to as ‘the father’), and AL, the father’s former wife. The mother sought a declaration that the Defendants held a freehold property, 35 Lansdowne Road, Worthing, for her as a life tenant, with her daughter the residuary beneficiary and sought damages against the father for breach of a written contract entitled ‘letter of intent’ dated 11 December 2018, and made between the mother and the father. In the alternative, the mother sought damages against the father in the sum of £2,444,000 for breach of contract.
2. The mother and the father have a daughter, T, who was born on 10 February 2012. There has been protracted litigation in the Family Court about T for almost the whole of her life.
3. On 1 July 2020 the father made an application for the claim to be transferred from the Chancery Division to the Family Division. The mother opposed the application. On 10 May 2021, following a contested hearing, Deputy Master Rhys granted the father’s application. On 19 November 2021 I allocated and reserved the claim to me to be heard alongside the Family proceedings.
4. On 22 April 2024 the father issued an application for an order striking out the claim and/or an order granting him summary judgment on his counterclaim. Both of these applications were opposed by the mother. These applications were listed for hearing before me on 25 March 2025. At the conclusion of oral submissions I reserved judgment.

## The Background

5. The factual background to these proceedings is very lengthy. It was helpfully set out in a detailed chronology and in the pleadings. I propose to set only the essential features of the history which are relevant to this litigation.
6. The mother and the father were never married. Their relationship had ended by the time T was born. T lived with her mother and spent time with her father.
7. On 23 October 2013, District Judge Moss made a financial arrangements order under Schedule 1 of the Children Act 1989. The principal terms of the order made by consent were that the father would:
  - (a) settle the sum of £450,000 on trust for T to provide her with a home, the trust to terminate at the later of her reaching 18 or completing her tertiary education, where the mother was to be a joint owner of the property purchased with the trust money;
  - (b) to pay the mother £20,000 to purchase fixtures and fittings for the property;
  - (c) to make monthly payments to the mother of £5,200 per month, reducing to £3,000 per month from 1 May 2014 for the benefit of T until she reached 18; and
  - (d) to make payments to the mother for T's school fees.

8. On 21 July 2014, District Judge Bailsford made an order that T would live with her mother save for specified times when she would live with her father. At this time the mother was living in the North West of England and the father was living in West Sussex.
9. On 5 September 2017 the mother made an application to enforce the financial arrangements order. On 17 January 2018 she made an application to vary the child arrangements order by seeking a variation of the time T spent with her father, by reducing it.
10. Thereafter the mother and the father considered the arrangements by which the mother would move to live geographically closer to the father and also to seek to resolve the mother's enforcement and variation applications. In the course of 2018 the mother moved with T from Wolverhampton to an address in West Sussex.
11. A letter of intent was signed by the parties on 11 December 2018. At this time neither the mother nor the father had instructed solicitors to advise them on the terms of the letter of intent, nor to represent them in negotiations about the same. Subsequently, the parents jointly instructed solicitors to assist in ensuring that the letter of intent could be implemented.
12. One provision of the letter of intent was an agreement by the mother and the father to seek, by consent, the adjournment of the court hearing listed on 19 December 2018 until the first available date after 1 March 2019. This hearing was adjourned by the court with the consent of both parties.

13. The solicitors instructed by the parties prepared documentation to create a bare trust of the property in West Sussex which was intended to be a home for the mother and T, subject to a 50-year tenancy at a nominal rent of £21 per month for the mother. The father signed the documentation on 7 February 2019. The mother did not. On 8 March 2019 the father completed the purchase of the property at 35 Lansdowne Road, Worthing, ('the property'), which he and AL held on a bare trust for T. (N.B., there are now different trustees.)
14. On 2 July 2019 the mother notified the father that she intended to move from West Sussex to Wolverhampton with T.
15. On 11 July 2019 the father issued an application to prevent the mother from removing T from school and from West Sussex.
16. On 18 July 2019 the mother issued an application seeking:
  - (i) an order to permit her to remove T from school and to move to Wolverhampton, in part because the father was said to have refused to provide funds to purchase a property pursuant to the financial arrangements order of 23 October 2013; and
  - (ii) an order to enforce the order of 23 October 2013.
17. On 31 January 2020 the mother issued this claim in the Chancery Division.
18. On 20 March 2020 the mother applied for a penal notice to be attached to the financial arrangements order.

19. The father filed and served a Defence and Counterclaim dated 29 May 2020.  
By his Counterclaim he sought a declaration that the letter of intent be set aside and be of no effect.
20. The mother filed and served an undated Reply and Defence to Counterclaim.  
She was given permission on 10 May 2021 to amend her Particulars of Claim in the terms of a draft Amended Particulars of Claim, but it was never signed or dated.
21. As I have mentioned above, on 10 May 2021 this claim was transferred from the Chancery Division to the Family Division. By order of 19 November 2021 the claim was allocated and reserved to me.
22. On 27 October 2023 I ordered that T should live with her father and should spend limited time with the mother as set out in the order.
23. In late December 2023 and early 2024 the father's solicitor wrote to the mother on four occasions inviting her to withdraw this claim on the basis that there should be no order as to costs. There was no response. Accordingly, the father issued his application for a summary determination of this claim on 22 April 2024.

#### The Law

24. The court may strike out a statement of case if it appears to the court:
  - (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

- (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
- (c) that there has been a failure to comply with a rule, practice direction or court order (CPR r.3.4(2) and PD3A paragraphs 1.1-1.5).

25. The court may give summary judgment against a claimant or defendant if:

- “(a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at a trial” (CPR r.24.3).

The principles to be applied on an application for summary judgment are set out in the case of *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) which were approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Fire) Ltd* [2009] EWCA Civ 1098.

26. In respect of the intention to create legal relations the essential test was described by Lord Bingham LCJ in *Edmonds v Lawson* [2000] QB 501, at paragraph 21:

“Whether the parties intended to enter into legally binding relations is an issue to be determined objectively and not by inquiring into their respective states of mind. The context is all important”.

27. The test for making a declaration, as sought in the father's counterclaim, was set out in *Rolls-Royce v Unite the Union* [2010] 1 WLR 318 by Atkins LJ at paragraph 120:

“... I think that the principles in the cases can be summarised as follows: (1) the power of the court to grant declaratory relief is discretionary. (2) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant. (3) Each party must, in general, be affected by the court's determination of the issues concerning the legal right in question. [...] (6) However, the court must be satisfied that all sides of the argument will be fully and properly put. It must therefore ensure that all those affected are either before it or will have their arguments put before the court. (7) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised. In answering that question it must consider the other options of resolving this issue.” ”

28. In opposing the application to strike out the claim the mother relied on the following propositions of law:

- (a) an application to strike out a claim or to order summary judgment in favour of the defendant, the court must assume that the facts relied on in support are true: see *Bridgin v Hancock* [2024] EWHC 623 (KB) and *Potquieten v Village* [2021] 10 WLUK 274;
- (b) there is a high bar for the defendant to surmount on a strike out application: see *Evans v Secretary of State for the Environment, Transport and the Regions* [2006] EWHC 322 (QB); and
- (c) letters of intent have been found to constitute a binding contract even if there remain terms which are to be agreed at a later date: see *Spartafield Ltd v Pinton Group Ltd* [2016] EWHC 2295 (TCC); *Twintec Ltd v Volker Fitzpatrick Ltd* [2014] EWHC 10 (TCC); *Novus Aviation Ltd v Alubaf*



Arab International Bank BSC(c) [2016] EWHC 1575 (Comm) and Barbuder v Eurocom Cable Management Bulgaria EOOD [2011] EWHC 1560 (Comm).

Submissions

29. I have read the clear and comprehensive skeletons filed and served on behalf of the father and of the mother.
30. The father's junior counsel, Mr Sherwin, made oral submissions to supplement the skeleton argument filed in support of the strike out application. It was accepted that the application had to be determined on the facts as set out in support of the claim and not on the basis of any disputed material. Broadly, the father submitted that the mother's claim had no reasonable prospect of success at trial.
31. It was submitted that the letter of intent signed by the mother and father on 11 December 2018 was never intended to create legal relations. Emphasis was placed on two particular passages in the letter of intent, namely;
  - (i) "The contents of this letter are intended to be binding but are without prejudice until implemented."; and
  - (ii) "This agreement supersedes the Financial Arrangements Order of DJ Moss dated 23 October 2013, copy provided under separate cover."
32. The father submitted that the letter of intent was never implemented, not least because the mother refused to accept or to sign the draft tenancy agreement which had been referred to in the letter of intent. Accordingly, the father

proceeded with the purchase of a property for the benefit of T but without the provision of a life tenancy for the mother in the property. It is to be noted that the mother has lived in this property since it was purchased.

33. It is of note that when the mother considered that the father was not abiding by the terms of the letter of intent, she did not seek to enforce it but rather she applied to enforce and/or vary the financial arrangements order made on 23 October 2013.
34. The mother's reliance on seeking to enforce and/or vary the financial arrangements order made by the court formed a key plank of the father's application to strike out the mother's claim.
35. On 17 September 2020 the court stayed the mother's claim in these proceedings until the determination of the father's application in the Family Court for permission to use documents produced in those proceedings in this claim. On 10 May 2021 the stay was lifted and the mother's claim was transferred from the Chancery Division to the Family Division. The mother had applied to file and serve an amended particulars of claim to which the father had consented but in fact the amended particulars of claim was never formally filed or served. No further steps were taken in the prosecution of the claim by the mother and on 22 April 2024 the father filed an application for a strike out of the claim and/or summary judgment on the counterclaim.
36. The dispute about the provision of a property in which the mother and T could live and, most particularly, whether the mother should have a personal interest or benefit in that property, arose and was maintained in the context of highly emotive and protracted litigation concerning the living arrangements for T.

37. The father further relied on two further grounds in support of his application to strike out the claim and/or for summary judgment, namely:
- (i) that the terms of the letter of intent sought to oust the jurisdiction of the court to make financial provision for T which is impermissible (see *Hyman v Hyman* [1929] AC 601); and
  - (ii) want of prosecution of the claim (see *Alfozan v Rasheed* [2022] EWHC 66 (Comm)).
38. I deal with the first ground, in respect of seeking to oust the jurisdiction of the court, which is advanced in support of the submission that the letter of intent is unenforceable at paragraph 49 below.
39. At the court's invitation the submission in respect of want of prosecution was not pursued by counsel for the father.
40. The mother's formal response to the father's strike out application and the application for summary judgment on the counterclaim was set out in a skeleton argument prepared by counsel. I permitted Ms Hazeldine, who was assisting the mother as a litigant in person, to make supplemental oral submissions on behalf of the mother.
41. In broad terms the pertinent submissions made on behalf of the mother in opposition to the father's applications were that:
- (a) the terms of the letter of intent were enforceable as a concluded agreement even though the terms of it had not been implemented;

- (b) the courts have held that letters of intent may form legally binding agreements between parties even in the absence of a concluded contract;
- (c) the personal benefit granted to the mother by the terms of the letter of intent could not otherwise have been provided to the mother by an order of the court pursuant to the provisions of Schedule 1 of the Children Act 1989;
- (d) the terms of the letter of intent, notwithstanding the inclusion of the phrase ‘supersedes the Financial Arrangements Order’, were not intended to and did not oust the jurisdiction of the Family Court to make orders for the financial provision for T; and
- (e) the mother had an arguable case in support of her claim and the father’s applications had failed to meet the high bar required to be satisfied which should, therefore, be dismissed.

42. Further, in the Amended Particulars of Claim, the mother included a claim seeking equitable compensation for proprietary estoppel. I note the Amended Particulars of Claim was never formally filed or served insofar as it was not signed or dated.

43. It was submitted on behalf of the mother that the claim for proprietary estoppel “must survive any attack that [the father] makes in relation to any construction of the [letter of intent].” This may be so, but, in my judgment, the claim has no reasonable prospect of success. First, it is doubtful that the terms of the letter of intent constituted a representation or assurance to the mother that she would receive a life interest in the property. Second, there is no evidence that the mother

relied on this representation or assurance when she moved to live at the property with T. Indeed, she would have known when she moved to the property that she had not been given a life interest in it. Third and finally, there is no evidence of any detriment having been suffered by the mother.

### Analysis

44. I accept the submissions made on behalf of the mother as to the legal tests to be applied by the court when determining the father's applications and the approach the court should take in terms of only considering the mother's case as pleaded and taking account of the evidence upon which she has relied and not relying on any disputed issues of fact.
45. I accept that the courts have in the past given effect to letters of intent as creating binding and enforceable agreements. I note, however, that all of the authorities relied upon by the mother in support of this submission were in a commercial context.
46. The court is bound to have regard to and to give considerable weight to the context in which the letter of intent came to be drafted and to be signed by the mother and father. They were both concerned with ensuring that the father made sufficient financial provision to provide for T's needs, her care and her stability. For the mother this primarily, but not exclusively, concerned the provision of a home in which she and T could live and which would provide T with a stable home life. For the father he had the same aspiration but was also concerned that T's home would be in a close geographical location to his home to enable him to play a full and beneficial role in T's life.

47. Ultimately these objectives were met by the purchase of the property in which the mother and T have lived for many years. Nevertheless, the family has been embroiled in acrimonious litigation about with whom T should live and with whom she should spend time for almost the whole of her life to date.
48. The negotiations between the parents in respect of the provision of a property for T were conducted in the midst of court proceedings and court orders concerning the living arrangements and the financial arrangements for the child. The letter of intent was drafted and signed without either parent having the benefit of independent legal advice or representation.
49. The letter of intent commenced with the words “The contents of this letter are intended to be binding but are without prejudice until implemented.” It is not in dispute that the contents were not implemented. This sentence was followed by: “This agreement supersedes the Financial Arrangements Order of DJ Moss dated 23 October 2013...”

Whatever was intended by the word ‘supersedes’, the agreement could not as a matter of law, insofar as it related to financial provision for T, oust the jurisdiction of the court to make orders for her financial provision. In any event, it is clear from the agreed documents that the parties had intended that the provision for T would be incorporated into and be the subject of a court order. This intention, at least as far as the mother was concerned, was reinforced by the subsequent applications she made to the Family Court to enforce and/or vary the existing financial arrangement orders.

50. In all of the circumstances, but confined to the evidence submitted and relied upon by the mother in support of her claim, I am satisfied and find that the letter

of intent did not create a binding and enforceable contract between the mother and the father at all and specifically in relation to the mother having a personal interest or benefit in the property purchased for her and T.

51. In the premises, I am satisfied that the mother's claim has no real or realistic prospect of succeeding and there is no other compelling reason why the case should be disposed at a trial.

Conclusion

52. In these circumstances the father succeeds on both of his applications. The mother's claim is struck out and judgment is entered for the father on the counterclaim.