

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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURT
OF ENGLAND & WALES
[2018] EWHC 3809 (Ch)



No. BL-2018-000275

Royal Courts of Justice

Wednesday, 12 December 2018

Before:

MR JUSTICE FANCOURT

B E T W E E N :

ARTEM PODSTRESHNYY

Claimant/
Applicant

- and -

(1) PERICLES PROPERTIES LIMITED

First Defendant/
First Respondent

(2) OLITA SELLERS
(also known as OLGA OLITA SELLERS)

Second Defendant/
Second Respondent

MS R. DRAKE (instructed by Devonshires Solicitors LLP) appeared on behalf of the Claimant/
Applicant.

THE SECOND DEFENDANT/RESPONDENT appeared in Person.

J U D G M E N T

MR JUSTICE FAN COURT:

- 1 In this matter of an application to commit the second defendant, Ms Sellers, to prison for breaches of the terms of freezing orders made in February of this year, the claimant is represented by solicitors and counsel who have been acting throughout. Ms Sellers herself appeared 25 minutes after the hearing was due to start today in person. There is a firm of solicitors on the record for her in these proceedings. They are called Stockinger Advocates and Solicitors, 49 Queen Victoria Street, London EC4.
- 2 I am told by Ms Sellers that she has very recently instructed a new firm of solicitors or sought to instruct a new firm of solicitors, Fidlers, to act for her in relation to this committal application. Fidlers have explained to her that they will make an application for legal aid on her behalf and they will act for her, if and when legal aid is granted. Legal aid should be granted as a matter of course to the second defendant, given that this is a committal application. So Fidlers, in due course, I fully expect will be able to act on her behalf.
- 3 I have seen fit to adjourn this hearing until a date between 6 and 8 February next year, so as to give the second defendant the opportunity to obtain legal representation, and for solicitors and counsel to attend this application on her behalf. It is an extremely serious application that Ms Sellers faces, and it is right in principle that she should be represented by lawyers and she is entitled in principle to legal aid for that purpose.
- 4 It is, however, a matter of considerable regret that it was only yesterday that the application for legal aid on behalf of Ms Sellers was made. The case has a history that goes back as far as 22 June last year, when the second defendant was served with the committal application when she was in court before Morgan J. on the hearing of another application. So she had the application notice and the evidence in support of it from that time.
- 5 The Court Service notified the parties, and that would include Mr Stockinger on behalf of Ms Sellers, back in October this year that the committal application would be heard in a three day window between 10 and 12 December. When they received that notification, the solicitors who act on behalf of the claimant, Devonshires Solicitors, wrote to Mr Stockinger as being the solicitor on the record for the second defendant and made various observations about matters connected with the committal application and other matters, and then said in terms in their letter:

“If Ms Sellers does not have the funds to instruct you to represent her in the committal hearing, she should be making an application for legal aid immediately. The court will look very dimly on an attempt to adjourn the committal application on late notice if she repeats her previous tactic of making an application on the day of the hearing, as she did with Mr Alexander QC. There is a very real and serious risk that, if she fails to properly declare her assets, that she will receive a custodial sentence.”
- 6 In email correspondence between Devonshires and Mr Stockinger since October, some of which was copied to the second defendant herself, there have been reminders about the need to obtain legal representation in time for an effective hearing of this application today, as it turns out, 12 December, but nothing was done by Ms Sellers until a very late stage, yesterday on this occasion, rather than the day of the hearing itself.

- 7 I am not in a position to say, as between Ms Sellers and Mr Stockinger, where the real responsibility for the failure to make that application lies. It may well be a matter that Ms Sellers needs to take up with Mr Stockinger. If he was unwilling to act for her or knew that he was going to be unable to represent her on this occasion, it was his duty to advise her about obtaining alternative representation. He may well have done so. I simply don't know. Those are, at the moment, privileged matters between Mr Stockinger and Ms Sellers. But I have to look at the matter as between Ms Sellers, on the one hand, and the claimant, on the other.
- 8 It is clear to me that the costs of today or some of the costs of today, at least, have been wasted as a result of the very late application for legal aid, an application that should have been made at a much earlier time. If it had been made at an earlier time, then there could have been an effective hearing of the application today. But, because of the very late application for legal aid, it has been necessary to adjourn the hearing until 6 to 8 February next year. In those circumstances, I am quite clear that the claimant is entitled in principle to the costs wasted as a result of that adjournment.
- 9 I do not consider that it is possible to make an accurate assessment of what costs are wasted until it is known, not just what the costs of today are, but also the costs in relation to the adjourned hearing that will take place in February. So what I am going to do is make an order that, in any event, the costs thrown away as a result of the adjournment will be payable by Ms Sellers to the claimant, but the summary assessment of what those costs thrown away are will be adjourned to be dealt with on the hearing of the application itself between 6 and 8 February next year.

CERTIFICATE

Opus 2 International Ltd. hereby certifies that the above is an accurate and complete record of the proceedings or part thereof.

*Transcribed by **Opus 2 International Ltd.**
(Incorporating **Beverley F. Nunnery & Co.**)
Official Court Reporters and Audio Transcribers
5 New Street Square, London EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript has been approved by the Judge