



Neutral Citation Number: [2020] EWHC 1642 (Ch)

Case No: PT-2020-000368

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Royal Courts of Justice
The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 24/06/2020

Before :

MR JUSTICE BIRSS

Between :

Sharooz Ghassemian

Claimant

- and -

(1) Matthieu Henri Andre du Bosq de Beaumont

(2) Anthina Emmanuelle Essig

Defendants

Adrian Davies (instructed by **Deighton Pierce Glynn**) for the **Claimant**

The defendants did not appear and were not represented

On paper

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE BIRSS

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30pm on 24th June 2020.

Mr Justice Birss :

1. The claimant Mr Ghassemian was the subject of an Extended Civil Restraint Order made by Henry Carr J in 2016. In 2017 Henry Carr J extended that order to expire on 19th October 2019. The order covered proceedings relating to a property at 56 Chatsworth Court. Acting on the court's own motion in July 2019 I directed that a hearing take place to consider whether the ECRO should be extended. In the end the hearing took place on 3rd December 2019, after the date when the ECRO of Henry Carr J had expired. I decided that the ECRO should be continued. My reasons are given in a judgment [2019] EWHC 3646 (Ch). That judgment sets out a brief summary of the long history of this matter and I will not repeat it all. Paragraphs 2 to 5 of that judgment are:

“2. Very briefly, it all relates to a property at 56 Chatsworth Court, Pembroke Road, London W8. At one time Mrs Sartipy [*the claimant's mother*] held a lease on that property. There were originally two sets of legal proceedings.

3. In about 2008 a claim was brought against Tigris Industries Inc. in the Land Registry. It related to a different property. The claim was either brought by Mrs Sartipy, alone and represented by Mr Ghassemian or by both Mrs Sartipy and Mr Ghassemian together. The claim failed and in 2011 a final charging order to secure the costs was made in favour of Tigris over 56 Chatsworth Court.

4. Meanwhile in a separate case, a claim was brought in the county court against Mrs Sartipy for unpaid services charges related to 56 Chatsworth Court. The claimants were Chatsworth Court Freehold Company Ltd and CA Daw & Son Ltd. That claim had come to an end in 2011. Mrs Sartipy was ordered to pay the unpaid service charges and costs. Another final charging order was made over 56 Chatsworth Court to secure these sums, this time in favour of Chatsworth Court Freehold Company Ltd and CA Daw & Son Ltd.

5. Since then, in every year since 2011, a bewildering range of unsuccessful applications, appeals and fresh proceedings have been brought to try and prevent enforcement. In recent years a number of documents have appeared which purport to be orders of the court but which seem to be forgeries, produced by Mr Ghassemian.”

2. Also set out in the judgment starting at paragraph 27 is what happened in 2018. Mr Ghassemian produced to the Wandsworth County Court a copy of an application notice in Court of Appeal proceedings which, by handwriting in the document, purported to remit the application to the Wandsworth County Court. The defendants included Mathieu De Beaumont, and Athina Essig. The Court of Appeal had made no such order. Paragraphs 30 and 31 explain:

"30. This document was deployed by Mr Ghassemian in Wandsworth County Court. In proceedings there Mr Ghassemian obtained orders evicting Mr Beaumont from the property, although Mr Beaumont has now been reinstated. The document itself was being used to give Mr Ghassemian this further opportunity to relitigate the issues relating to ownership of 56 Chatsworth Court. I refer to only one example. It is an order made by HHJ Helman in Central London County Court, on 21 December 2018. It includes a reference to an application for an injunction filed by the claimant Sharhooz Ghassemian in the Court of Appeal on 20 July 2018 and, as it was put in HHJ Hellman's order, "Remitted to the County Court at Wandsworth" on 25 July 2018.

31. I infer that this is another example of Mr Ghassemian's conduct, which I can only characterise as devious and dishonest. The inference to draw from this material, and I bear in mind that this is a civil court and I am drawing these inferences on the civil standard, is that Mr Ghassemian himself must have written "remit to Wandsworth CC" on this Court of Appeal document, and then used it for his own ends in pursuing proceedings in the county court."

3. One of the issues addressed in my 3rd December judgment was what to do about the period in between 27th October 2019 and 3rd December 2019. The question was, assuming the court had decided that the ECRO should continue, what should be done about that period, and what were the court's powers. I recollect that the respondents had submitted that the court could and should extend the ECRO as from the date of previous expiry. I dealt with this at paragraph 36 of the judgment:

"36. So, I am satisfied that the the civil restraint order against Mr Ghassemian should be extended for a period running for a further two years from the date when it expired. I have well in mind the fact that this would extend an order which has already expired. If there was any evidence that any activity which took place between the date when it expired and today needed to be dealt with differently, then a special order might be considered dealing with that period but Mr Ghassemian has told me that he has not done anything in that period. He says that was because he did not need to, and that may be, but on that basis there is no reason to make any order relating to the period before today, and after the expiry in October 2019."

4. In other words, since the claimant had told the court he had not done anything in that period, there was no reason to consider that issue.
5. However it turns out that in fact in 26 November 2019 the claimant issued a possession claim relating to 56 Chatsworth Court against Mathieu De Beaumont and Athina Essig in Wandsworth County Court (claim no. F01WT658). It came before DDJ Davies and by an order on 23rd January 2020 he transferred the claim to the High

Court. The file came to me and on 19th May 2020 I made an order staying the claim under 26th June 2020, as follows:

(1) This action is stayed until 26th June 2020 or further order on the ground that its continuation without the court's permission appears to be contrary to the Extended Civil Restraint Order made against the claimant on 3rd December 2019.

(2) The claimant must, by 12th June 2020, file at court and serve on the defendants written reasons why the continuation of this action is not contrary to the Extended Civil Restraint Order. The court will consider those submissions without a hearing.

6. In accordance with those directions a bundle and skeleton argument of counsel representing the claimant were filed at court on 12th June 2020.

The stay under PD51Z and any successor

7. On 27th March 2020, due to the coronavirus pandemic, PD 51Z came into force, staying all possession claims. As this is a possession claim, it has in fact been stayed by PD 51Z since 27th March 2020, it was in fact subject to that stay when I made the previous order, and is still subject to that stay. As far as I am aware the proceedings do not fall into any of the exceptions.
8. Therefore on that ground alone I will make an order staying these proceedings (even if the order is strictly unnecessary).
9. The stay under PD 51Z comes to an end on 25th June 2020, however, as is explained on the section of the Justice website dealing with the CPR, the Civil Procedure (Amendment No.2) (Coronavirus) Rules 2020 have been laid before Parliament. Those rules will temporarily amend the Civil Procedure Rules 1998 Part 55 to stay all possession proceedings brought under Part 55 from the 25th June until 23rd August 2020. I will reflect that in the order (see below).
10. I have considered whether to deal with this matter any further given the terms of PD51Z. For the reasons explained below, in the highly unusual circumstances as they are I have decided that I ought to address the balance of this matter now. Nothing I will do will take effect during the coronavirus stay.

The application to lift the stay granted on 19th May 2020

11. In the bundle and skeleton argument of counsel representing the claimant were filed at court on 12th June 2020. The bundle includes a copy of what purports to be my judgment of 3rd December 2019. Counsel's skeleton argument is largely concerned to make submission that the possession claim is meritorious (and I note that the claimant now has a legal aid certificate). It also addresses the point that the County Court action was brought on 26th November 2019. It submits therefore that the action was issued at a time when the earlier ECRO had expired and before the 3rd December 2019 ECRO had been made. On the issue of what the claimant told the court on 3rd

December 2019 about what he had done in the interim period the skeleton argument says this:

“7. It is apparent from paragraph 26 of the transcript of Birss J’s judgment given on 3rd December 2019 [1.9] that Birss J had well in mind that the status of any proceedings issued between 20th October 2019 and 3rd December 2019 might require:

“a special order . . . but Mr Ghassemian has told me that he has not done anything in that period in the Business & Property Courts because he said he did not need to and that may be, but on that basis there is no reason to make any order relating to the period before to-day and after the expiry.”

8. C’s submissions are as follows. Firstly, the suggestion at paragraph 1 of the May 2020 Order that to continue this claim might be contrary to the December 2019 Order is not correct. The December 2019 Order says nothing about the continuation of a pending action, it merely prohibits the institution of new proceedings or the making of applications in pending proceedings.

9. On the face of the December 2019 Order, provided that C does not need to make any applications in this claim, it can proceed, uninhibited by the December 2019 Order. 10. Indeed, D’s counsel was not inclined to argue the contrary before DDJ Davis on 20th January 2020, though plainly counsel’s approach below does not preclude or limit the scope of argument in the High Court.”

12. The passage quoted from my judgment appears in the version of the judgment in the bundle (at paragraph 26). However the version quoted records what the claimant said as being that he has done nothing in the Business and Property Courts. That is not what the approved version of the judgment says. It records that the claimant said he had not done anything. His statement was not limited to the Business and Property Courts. The significance of the difference is that the Business and Property Courts are part of the High Court and so exclude the County Court (although B&PC work in the County Court is sometimes labelled as such). Therefore the version quoted in the skeleton would be true despite the claimant having issued the County Court claim on 26th November, whereas the version in the approved judgment would not be true.
13. Furthermore I have gone back and checked the unapproved transcripts provided to me by the transcribers (for some reason two transcripts were produced). The relevant passages in the transcripts are

Opus transcript:

“17. So, I am satisfied that I should extend the civil restraint order against Mr Ghassemian for a period running for a further two years from the date when it expired. I should say that I

have well in mind the fact that I am extending an order which has already expired. If there was any evidence that any acts which took place between the date when it expired and today needed to be dealt with differently, then I might consider whether a special order should be made dealing with the period from its expiry until now. But Mr Ghassemian has told me that he has not done anything in that period because he said he did not need to, and that may be, but on that basis there is no reason to make any order relating to the period before today, and after the expiry.”

Epiq transcript:

“15. I am satisfied that I should extend the extended civil restraint order against Mr Ghassemian for a period running for a further two years from the date when it expired. I should say that I have well in mind the fact that I am extending an order which had already expired. If there was any evidence that any acts which took place between the date when it expired and today needed to be dealt with differently, then I might consider whether a special order should be made dealing with the period from its expiry until now. But Mr Ghassemian has told me that he has not done anything in that period because he said he did not need to. That may be but, on that basis, there is no reason to make any order relating to the period before today and after the expiry.”

14. The difference in paragraph numbering is not significant. Note also that the reason this passage appears in paragraph 36 of the approved version is that, as the judgment itself explains, when I gave the ex tempore judgment I explained that I would not attempt to summarise the background at that stage but would include a summary if I was asked to approve the transcript.
15. The version of the judgment which appears in the claimant’s bundle and purports to be an approved judgment does not indicate where it came from. No firm of transcribers is mentioned on it. I infer it is not authentic. Rather it seems to be another example of the claimant’s deviousness and dishonest behaviour.
16. I will not decide the question whether the order made on 3rd December 2019 had effect as from 27th October 2019 on this occasion. In any event however, if the claimant had told the court on 3rd December 2020 that he had issued yet another possession claim against Mathieu De Beaumont and Athina Essig in Wandsworth County Court, on 26th November 2019, then the issue would have arisen directly on 3rd December and I would have had to decide what or what else to do about it. One dimension to that question would have been that the claimant will have known full well on 26th November 2019 that the court was going to consider a week later whether to continue the ECRO of Henry Carr J which would have applied to that claim.
17. On the face of it the claimant seems to have misled the court on 3rd December with the result that, on the assumption that the order which was made does not prohibit the County Court action without leave, a different or further order might have been made

which did expressly do so. What I am going to do is continue the stay of this action, after the expiry of the coronavirus stay, until the matter comes to a hearing. The hearing will be after the end of the coronavirus stay. At the hearing the court will consider the scope of the order which was made and also whether to make any further order concerning the period between 27th October 2019 and 3rd December 2019. It may be that, if the 3rd December order does not apply to the County Court action because it was issued earlier, no further order putting into effect an ECRO for that period could or should be made now, but it seems to me that the matter ought to be considered in all the circumstances. That hearing will also give the claimant the opportunity, if so advised, to make whatever submissions he wishes to make on the issue.

18. The order and this judgment will be served on the representatives of the defendants in the proceedings in court on 3rd December 2019. Those parties are not required to attend but they may do so.
19. As the order was made without a hearing, all persons affected by it will have the right to apply to set it aside or vary it. However that application can only be made after the expiry of the coronavirus stay.
20. There was another claim brought in the County Court on 26th November 2019 by the claimant. This was issued in Willesden County Court against the Commissioner for the Metropolitan Police (claim F02WI173). DJ Kanwar struck that claim out and directed that any application to set aside be made to the High Court. That application is also now proceeding in the High Court (BL-2020-000594) but I mention it only to say that it appears to raise different issues.