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Case No: BV16D02446

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/11/2023

Before:

MR. JUSTICE MOOR

Between:

FRANK ERIC HERSMAN

Applicant

- and -

ALEXANDRA CAROLINE DE VERCHERE

Respondent

MR. T. AMOS, K.C. (instructed by JMW Solicitors LLP) for the Applicant
The Respondent did not appear and was not represented

JUDGMENT

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MR. JUSTICE MOOR :

1. This is an application dated 31st March 2023 to commit the Respondent, Ms. Alexandra Caroline Hersman, to prison for contempt of court. The Applicant is Mr. Frank Eric Hersman. The Respondent is now known by the name De Verchere.
2. The parties married on 12 April 1996. The marriage broke down some years ago. A decree nisi was pronounced on 26 April 2017 and made absolute on 20 April 2018.
3. The financial remedy proceedings were heard by Mostyn J in June 2019. His order is dated 12 June 2019. There was a recital to that order that Mr. Hersman is the sole beneficial owner of two very significant and substantial French properties, Chalet Pearl, a skiing villa in Courchevel, and Villa Pearl, a very nice seaside villa in St Tropez. The recital was to the effect that he is the sole beneficial owner of those properties as from the date of the order.
4. There was an undertaking not to disclose information outside the private financial remedy proceedings. This hearing is in open court. For the sake of good order, I release him from that undertaking.
5. The order went on to provide that these two properties were to be transferred into his sole name in exchange for a lump sum that he was to pay to Ms. De Verchere of £709,707. The transfers were on terms that she was to be released from her covenants under the mortgages, which were either to be discharged or the properties remortgaged.
6. In the past, I have been critical of the fact that nothing happened for a number of years, but that is water under the bridge now because in December 2022, Mr. Hersman applied to enforce the order and for an account of all monies received from

rentals of the properties by Ms. De Verchere since the 2019 order. The matter initially came before me on 23 January 2023. I refused, on that day, to make an immediate order for vacant possession of Chalet Pearl; or a transfer of property order; or to direct the surrender of the keys and the access codes to Mr Hersman. I took the view that the parties, or in particular the Respondent, Ms. De Verchere, was entitled to put her case before me properly. I therefore directed a further hearing on 24 February 2023.

7. I did accept an undertaking from her that she would pay any net rental income that she received after that date, on the basis that she could deduct the running costs and mortgage payments, into an escrow account. It is quite clear from her statement of 15 February 2023 that, prior to January 2023, she had received some very significant amounts of rent, amounting to approximately €1,970,000. She said she had expended just over €1 million in expenses but she had not paid anything towards the mortgage.
8. It was also clear that she had received some quite significant sums by way of rental income since the hearing in January 2023, amounting to approximately €500,000, but nothing had been paid into the escrow account. Her counsel, on 24th February, told me that this was because there had been no net rental income. That statement raised eyebrows from both me and Mr. Hersman's representatives, but I had not heard oral evidence and I was unable to make any findings of fact.
9. On that occasion, both parties were represented by counsel and solicitors and both parties were present before me in court. Mr. Hersman, in his oral evidence on oath to me today, has confirmed that this was the case. I took the view, having heard all the submissions, that I should make a number of orders. These orders, particularly para.17, were that Ms. De Verchere was to give vacant possession of Chalet Pearl by

7 March 2023. I had intended it to be earlier than that. She, through her counsel, had told me that there were no future rentals, booked but, after the hearing but before the order was drawn up, it became clear that there was in fact a rental from, I believe, 28 February to 6 March. I therefore decided that she should give vacant possession from 7 March 2023.

10. I also directed that she was to surrender to Mr. Hersman all her keys and access codes to the property; that she was to give him all documentation to enable him to take over the running of the rentals of the chalet; and she was to transfer to him any deposits that she had received, as at that date, in relation to future rentals. On that basis, he was to take over paying the mortgage and the outgoings. There was also an order that she was to transfer to him Chalet Pearl forthwith on her being released from the mortgage. I was absolutely sure, in giving my judgment, that the justification for making these orders was that it was clear, pursuant to the order of Mostyn J in 2019, that Chalet Pearl was beneficially owned by Mr. Hersman with the legal title being transferred to him by Ms. De Verchere. I, therefore, made the orders that I did.
11. I have already indicated that Ms. De Verchere was present at that hearing. Moreover, she decided to appeal my order and she did so. In support of an application for a stay, she argued to both me and the Court of Appeal that it would defeat her appeal if she had to vacate the property prior to the appeal being heard. I refused her a stay and directed that she had to vacate but I, of course, made it clear that this would be subject to any order of the Court of Appeal. I do not believe she actually applied to the Court of Appeal for a stay, but Moylan LJ considered her application for permission to appeal on 7 July 2023 and refused it, saying that her appeal had no real prospect of

success. Moylan LJ says, in his decision, that it is clear that she is fully aware of the order and the requirements thereunder.

12. As I have already indicated, Mr. Hersman applied for her committal to prison on 31 March 2023. He raised six separate allegations of contempt, namely a failure to deliver up vacant possession; a failure to surrender the keys and the access codes; a failure to deliver up the documentation; a failure to transfer the deposits; the failure to pay money into the escrow account pursuant to the previous order; and the non-transfer of the legal title to him. He has put in a number of statements supporting his position.
13. On 24 August 2023, Ms. De Verchere's previous solicitors, Alexiou Fisher Phillips, indicated that the firm was no longer instructed and they came off the record by giving a notice of intention to no longer act on 12 September. The firm gave Ms. De Verchere's email address for service as (redacted).
14. On 11 October 2023, Theis J ordered that service of all documents could be effected on Ms. De Verchere by email. On 19 October 2023, I heard an application for directions. Ms. De Verchere did not attend and she was not represented. I was satisfied, however, that she had notice of that hearing and I directed that the committal application be heard today at 2.00 p.m. I warned her that an order might be made in her absence if she did not attend. I made it entirely clear to her that she was not obliged to file any evidence. I directed that she could be served with notification of both the committal application and the notice date of the hearing by serving it on her three email addresses.

15. It is absolutely clear that she knows about today's hearing and is fully aware of all the issues. She has clearly read Mr. Amos, K.C.'s position statement on behalf of Mr Hersman for this hearing.
16. In the statement that she filed today, she tells me that she gives the court her sincerest apologies that she is not in court today. She refers to having limited English language skills, although, in due course, I will remind myself of the provisions in the committal notice in relation to that. Moreover, it is also absolutely clear from the documents that she sends to me in English that her English is, in fact, extremely good. She suggested that one potential reason why she could not come today was that there is a hearing in Albertville, France tomorrow but it is absolutely clear, in fact, from the documents she has sent that she has not, and never has had, any intention of appearing in this court today, either in person or by instructing lawyers. She has never even sought to appear remotely, which she could, of course, have asked to do.
17. She then makes reference to the history of the case and makes a number of allegations about alleged failures of Mr. Hersman in relation to the order of Mostyn J. She says that she did facilitate a transfer of the shares in a company called Oyster Properties to Mr. Hersman. His response to that is to accept that she did so, but to note that she then immediately cancelled the contract between Oyster Properties and herself which had enabled Oyster Properties to rent out Chalet Pearl.
18. She asserts that these legal proceedings fall under the French jurisdiction. I am clear that this is not correct. The divorce was properly instituted in this jurisdiction. The parties were divorced in this jurisdiction. The financial remedy aspects of this marriage were dealt with here and are still being dealt with in this jurisdiction.

19. I have read her documents very closely and carefully. There is not a word in them about my February 2023 order or her compliance with that order. I accept, of course, that she did not have to respond to the committal application as a matter of law, but I merely make the point that there is nothing in her statement in relation to para.17, in particular, of my previous order.

20. She has also drafted a response to Mr. Amos in which she makes a number of points but, again, I do not consider that any of them have any substance or relevance to what I have to decide. She makes a number of points saying that she cannot transfer the property or indeed vacate unless Mr. Hersman pays the mortgage and she says, if he takes possession, he will never repay it. That is not an answer to the committal application. Indeed, Mr. Hersman says that he has an offer from a Middle Eastern bank to refinance the mortgage to enable the property to be transferred to him with Ms. De Verchere released from the existing Barclays mortgage covenants.

21. She does say that she will make herself available to sign the deeds of transfer of both properties with a notary before 31 December 2023, as soon as Mr. Hersman has proved that he has the necessary funds to redeem the mortgages on both properties. He has responded by producing a document to me dated 3 October 2023 which suggests that he does have those funds available. Ms. De Verchere's offer is a chink of light in this case. It is just possible that she might, at some point, comply with the transfers. Clearly, it would be in everybody's interests if Mr. Hersman was to draft the necessary documentation to effect such transfers; present them to her; ask her to sign it; and potentially have the properties transferred to him by 31 December 2023, but I entirely understand his reservations as to her bona fides in that regard.

22. That completes a review of the evidence that was before me on paper. This afternoon, Mr. Hersman has given oral evidence to me on oath. He has confirmed that in relation to para.17 of my order, he has not been given vacant possession of Chalet Pearl. In relation to 17(b), he has not been given the keys and access codes. In relation to 17(c), he has not had the documentation that was required and in relation to 17(d), he has not received any deposits for rentals.
23. I am now going to remind myself of the notices that were given to the Respondent when she was served with the notice of application. She was reminded that she has the right to be legally represented in the contempt proceedings and that she is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid, which may be available, without any means test. I am entirely satisfied that she has known about that and she has deliberately decided not to avail herself of either of those provisions. Indeed, at the time the committal application was issued, she did have a firm of solicitors on the record, but they have subsequently come off the court record.
24. At para.3, it says that she may be entitled to the services of an interpreter, which deals with her point about language difficulties. It says she is entitled to a reasonable time to prepare for the hearing. She undoubtedly has had more than a reasonable time to prepare. It says she is entitled, but not obliged, to give written and oral evidence in her defence. It says she has the right to remain silent and to decline to answer any questions the answer to which may incriminate her.
25. It says, at para.7, that the court may proceed in her absence if she does not attend and will only find her in contempt, whether she attends or not, if the court is satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute

contempt. At para. 8, it says that, if the court is satisfied that she has committed a contempt, the court may punish her by a fine, imprisonment, confiscation of assets or other punishment under the law. At para. 9, it says that, if she admits the contempt and wishes to apologise to the court, that is likely to reduce the seriousness of any punishment by the court. At para. 10, it states that the court's findings will be provided in writing as soon as practicable after the hearing and, at para.11, the court will sit in public, as indeed I have done. It does say unless and to the extent that the court orders otherwise, my findings will be made public. I have not made any such order to prevent publication.

26. I have decided that I should proceed in her absence. She was warned that I might do so. She is fully aware of the hearing. She has deliberately absented herself. I therefore decide to proceed without her.
27. I remind myself that the burden of proof is on the Applicant, Mr. Hersman. Ms. De Verchere has to prove nothing. The standard of proof is the criminal standard of proof, namely I have to be satisfied of a contempt beyond reasonable doubt. In other words, I have to be sure that she is in contempt. She does not have to prove anything. She is absolutely entitled to remain silent and not to respond to the application. If she had attended, I would have reminded her again of that. I am not able to, and I do not, draw any adverse inferences whatsoever from her not giving evidence or even from her failure to attend today. All the protections available to her have been drawn clearly to her attention. I am entirely satisfied that she has had proper notice of both the order and the notice of this hearing. That is obvious from the fact that she has today responded to me in writing.

28. I now turn to my findings. I am satisfied beyond reasonable doubt that para.1 of the alleged breaches is proved. Ms. De Verchere has not delivered up vacant possession of Chalet Pearl, complete with all furniture and other chattels, including food, drinks and toiletries, in breach of para.17(a) of the order that I made dated 24 February 2023, which was subsequently amended on 8 March 2023 and redated 9 March 2023. That breach is ongoing.
29. I am entirely satisfied beyond reasonable doubt that she is in breach of the second allegation, namely she has not surrendered the keys and access codes to the property in breach of para.17(b) of the order of the same date.
30. I am entirely satisfied beyond reasonable doubt that she has not delivered up the documentation necessary for the Applicant to take over the management of Chalet Pearl, including but not limited to staff contracts, rental agreements, utilities and insurance contracts and all information, including emails and intellectual property, in breach of para.17 of the same order.
31. In relation to the fourth allegation, I am entirely satisfied beyond reasonable doubt that the Respondent has not transferred any deposits for current rentals into the Applicant's bank account in breach of para.17(d) of the order. I do accept that it might have been her case that there were no such deposits, but she has not advanced that case and it is therefore clear to me that she has not complied with that paragraph or told the court that there are no such deposits.
32. Paragraph 5 alleges that she has never paid any rental monies into the escrow account held by her solicitors in breach of her undertaking given and included at para.14 of my earlier order of 23 January 2023. This was in the context of her accepting she had

received rental income between 23 January 2023 and the hearing in February 2023 of over €500,000. The application contends that the breach is ongoing.

33. On the balance of probabilities, I am satisfied that she is in breach of that order. I consider it almost impossible to see how there could be no net income, particularly when she has not paid the mortgage and that rental income was received over a relatively short period of time. However, I have not investigated this. I have not done any form of balance sheet to assess what potential outgoings might go against that €500,000 and I have decided, in fairness to the Respondent, that I should not find para.5 proved. I do, of course, make the point that there is going to be a hearing next year in which, to the civil standard of proof, I will decide whether there is money owing to Mr. Hersman as a result of that undertaking.
34. Paragraph 6 does not include an allegation of contempt.
35. Paragraph 7 is that she has not transferred the legal title of Chalet Pearl to the Applicant in breach of para.16 of my order, again dated 24 February 2023, and the breach is ongoing. It is, of course, right that she has not transferred the legal title. However, again, I am going to give her the benefit of the doubt. I did ask, or rather Mr. Amos asked Mr. Hersman about this. He said that his lawyers in France have been trying to negotiate with her. I am not clear that she has ever been presented with a transfer document. I am not clear that it has ever been made clear to her that he does have a mortgage offer that will discharge the liability and although, again, I might be prepared to find, on the balance of probabilities, a breach of that order, I cannot find it beyond reasonable doubt.
36. It does not matter because given that allegations 1, 2, 3 and 4 are proved, the contempt overall is proved and I make such findings.

SENTENCE

37. I now turn to sentence. If Ms. De Verchere had been present, I would have given her the opportunity to make representations to me in mitigation. She is not here to do so, but she has been warned clearly that the court might proceed in her absence and I therefore intend to do so.
38. There are two elements to sentencing for contempt. The first is to punish the contemnor for the proved contempt. The second is to secure compliance with the order of the court.
39. Mr. Amos, K.C. has drawn my attention to the case of *Abdi v Manchester City Council & Others* [2023] EWCA Civ 1214. That was a very different case to this because it involved contempt in relation to non-disclosure of the whereabouts of four children. The initial sentence in that case was one of three months imprisonment, increased, following a second contempt, to six months and, on the third contempt, to twelve months. The Court of Appeal dismissed the appeal.
40. I am also very well aware of a case called *Allami v Fakher* [2023] EWCA Civ 532. In that particular case, MacDonald J, sentenced Mr. Fakher to six months in prison for failing to return two children from Iran. Again, the Court of Appeal dismissed the appeal and indicated that an initial sentence of six months was perfectly proper in accordance with the guidelines.
41. I have considered those two authorities. Indeed, it is clear that Ms. De Verchere has also done so, because she refers to *Abdi* in one of her two documents, making the fair point that there was a totally different situation there because it was a children's case.

42. I am of the view, however, that contempt of the High Court is a very serious matter, whether it involves children or whether it involves any other aspect of the Family Court and High Court's work. The court expects and requires compliance with its orders. It is entitled to take a very serious view if there is no such compliance, particularly if the compliance is deliberate; extends over a long period of time; there is no remorse; there is no apology; and, subject to the point that Ms De Verchere might be prepared to transfer the property by 31 December 2023, there is no indication of any intention now to give Mr. Hersman vacant possession and comply with the other orders that I made.
43. For those reasons, I am clear that this contempt is so serious that an immediate sentence of imprisonment is the only sentence that I can pass given the severity of the matter. If Ms. De Verchere had attended court and had admitted the contempt, which, in my view, she could not really deny, I would have been prepared to suspend my sentence on terms that she comply with my order by a certain date, but she has not attended and it is clear that she has no intention of doing so. I am therefore clear that it must be an immediate sentence of imprisonment.
44. I am satisfied that a sentence of six months in this case would be too much. I have therefore come to the conclusion that the immediate sentence of imprisonment that I should pass is one of three months' imprisonment, of which she will serve half. I give her permission to apply to me to purge her contempt and I make it extremely clear that I would be very receptive indeed to such an application if she gives Mr. Hersman vacant possession; gives him the keys and the access codes to the property; gives him the documentation; and cooperates in transferring this property to him.

45. I will discuss, in due course, any other orders that Mr. Amos KC may seek, but that is the sentence of the court. I also direct that a copy of both my judgment on the committal and my sentencing remarks are to be transcribed at public expense and placed on the National Archives and the Courts and Tribunals Judiciary website as soon as possible.

(Judgment ends)
