IN THE COUNTY COURT AT LUTON

Case No: F01RG631

Courtroom No. 5

Luton Justice Centre
Floors 4 & 5,
Arndale House
The Mall
Luton
Bedfordshire
LU1 2LJ

10.32am – 10.55am
Tuesday, 13th October 2020

Before:
HER HONOUR JUDGE BLOOM

B E T W E E N:

JOHN HICKS

and

FAIZA PERVAIZ and KAMIL PERVAIZ

MS N INNES appeared on behalf of the Claimant
NO APPEARANCE by or on behalf of the Defendants

JUDGMENT
(For Approval)

HHJ BLOOM:

1. This is an application to commit Ms Pervaiz to prison for failing to comply with an order that was made on 25 October 2019 by District Judge Parker. It is the type of Order that is made so many times in front of the district bench. It was in relation to a tenancy agreement and the landlord, Mr Hicks, wanted access to the property at 9 Yeoman Place, Woodley, RG5 3BX because he wanted to inspect the gas appliances and carry out an energy performance certificate. Therefore, an Order was made requiring the defendants, who are in fact a Ms Pervaiz and her adult son, that on not less than 24 hours' notice being given to them in writing they were to allow Mr Hicks and/or his agents access to the property for the purpose of inspecting, maintaining, and repairing any gas insulation, and for the purpose of preparing an energy performance certificate. That was an Order, as I say, made on 25 October, and it had a penal notice attached to it. It was amended under the slip rule on 5 November merely to add the name of, 'District Judge Parker' which had inadvertently been not included in the original Order.
2. The Order was sent by letter to Ms Pervaiz on 28 October with a request that there be access on 1 November. It does not appear it was personally served on her, but there is no doubt she received the order because she wrote to the court about it, and in any event His Honour Judge Clarke in his order, made on 21 February 2020, retrospectively dispensed with personal service, and deemed service on 29 October by the letter that was delivered to her property.
3. On 1 November, which was the date when the arrangement had been made for attendance, there is an affidavit from Mr Hicks, the claimant's son, explaining that he attended at the property on that date with a Mr Jenkins, who is an employee of Gas Electric, and Mr Touchard, who is an employee of SW Pro who carry out EPC. Although Ms Pervaiz was there as she spoke to them through the kitchen window, she refused to grant access, and said she had appealed against the order. Therefore, access was refused. As I say, there is an affidavit, and it is that breach that is relied upon.
4. It is right to say that she did make an application to appeal. She sought permission to appeal, which was dealt with by myself on the papers, and I refused permission to appeal. She then tried to appeal to the High Court even though she had also requested an oral redetermination in front of the Circuit Bench. McDuff J wrote a note saying that the High Court did not have jurisdiction, but he had misread the order I made and had not

appreciated that I had included a right that she could reopen the matter in front of another circuit judge.

5. His Honour Judge Rochford heard the oral application for redetermination. She did not turn up at that hearing, which was on 29 January, and, therefore, her appeal was dismissed. I raise that because, as we will see in the chronology, one of her reasons for refusing to cooperate with the court procedure is she says that the appeal to the High Court is still outstanding, and I will come back to that in a moment.

6. As I say the application to commit was issued. It was originally served, and I have seen a certificate of service, on her on 21 January, and I had directed on the papers that there be directions for committal to be heard before His Honour Judge Rochford after he had dealt with the permission to appeal issues. On 29 January he dismissed permission to appeal, and made directions regarding the committal. The claimant by then wanted to file an amended application notice, and they were ordered to do so by 4 February. Inadvertently they did not do it until 5 February. There is a certificate of service on the file to say that on that day they delivered by hand to her all the documents namely the injunction of 25 October, the amended application for committal with the affidavit and all the exhibits. All of these documents were served on her on 5 February. An application was made for relief from sanctions because they were a day late in serving it.

7. His Honour Judge Clarke on 21 February, which was the date that the application for committal was listed to be heard, dealt with the application for relief, and gave relief from sanctions, and adjourned the committal hearing to 7 April. It is right to say that the defendant did not attend that hearing. The defendant has so far not attended any of the hearings at this court.

8. The matter was adjourned and attached to the order of His Honour Judge Clarke was the notice to defendant in committal proceedings, which sets out very clearly the right to Legal Aid and independent legal advice. It explains that she has the right to challenge evidence, to be silent, not incriminate herself, she is entitled to criminal Legal Aid, she was given the details of how to obtain Legal Aid, and that she could ask the court office to provide a list of local solicitors. In addition, the solicitors for the claimant were ordered to write to her and bring to her attention the importance of this application, and they did so by letter dated 26 February telling her the next hearing was on 7 April, and including within it the details of two solicitors, but also telling her she could approach her CAB, and how to contact other Legal Aid firms. There is a certificate of service to show that that order and

the letter attached to it was served on the defendant, Ms Pervaiz, on 26 February of this year.

9. As I say, the hearing was due to be in April but because of the Covid-19 pandemic, at the request of the claimant in fact, the matter was adjourned because it was considered as the defendant was elderly it was not appropriate at the height of the pandemic for her to have to make a personal appearance. It was then adjourned until today's date, and I have got no doubt that Ms Pervaiz has received the notice of hearing. I say that because she wrote to the court on 7 October. The notice of hearing was sent on 29 September saying that it was listed for today's date, so probably the day that she had received the order she wrote to the court saying that, "The appeal against my order refusing permission to appeal on the papers was outstanding. Until that was dealt with there could be no other hearing" and she says she has power of attorney for her son. The application to commit is only against Ms Pervaiz not her son, and she says, "We cannot attend any other hearing on this matter until the High Court appeal has been dealt with". There was then another email from her I believe on 7 October in a similar vein, the same thing again, she talks about the claim against Mr Hicks is increased to £950,000, "It increases with the time of suffering. The carbon monoxide emitting gas boiler in the kitchen has now been removed and the gas pipe sealed since the respondent refused to do anything about this" by respondent she means Mr Hicks, "If they want to get rid of us it's not as simple as providing a new boiler, they have to pay damages" and, again, says they cannot attend any hearing until the High Court permission to appeal application against my order has been dealt with.

10. At my instigation, the court wrote to Ms Pervaiz on 8 October, copying the claimants into the letter, saying that:

> "The hearing to commit is effective on 13 October 2020 and all parties should attend. The respondents are advised to seek legal advice. The appeal in the High Court is academic and redundant. It was against an order of Her Honour Judge Bloom refusing permission to appeal on the papers. The defendant sought an oral reconsideration of Her Honour Judge Bloom's order, which was heard by His Honour Judge Rochford on 28 January when he refused permission to appeal. That order supersedes the order of Her Honour Judge Bloom".

Notwithstanding the clear information that was given to her on 8 October Ms Pervaiz has not attended today, and has not provided any explanation.

11. Ms Innes has referred me to the case of *Sanchez v Oboz* [2015] EWHC 235, which is a

decision of Cobb J, and it was 6 February 2015, and was dealing with committals in the absence of the defendants. Cobb J pointed out at paragraphs four and five some of the issues that arises stating that it is unusual but not exceptional to proceed to determine a committal application in the course of the absence of a respondent. He refers to the fact that these are criminal in nature, and, therefore, proceeding with a trial in the absence of the accused is a course which should only be done with great caution, and with close regard to the fairness of the proceedings. He continued "(ii) *Findings of fact are required before a penalty can be considered in committal proceedings; the presumption of innocence applies… The tribunal of fact is generally likely to be at a disadvantage in determining facts in the absence of a party. (iii) The penalty of imprisonment for a proven breach of an order is one of the most significant powers a judge has, and there is a real prospect of a deprivation of liberty. (iv) By virtue of the quasi-criminal nature of committal proceedings Article 6(1) and Article 6(3) of the ECHR are actively engaged*" and, therefore, the defendant is entitled to a fair and public hearing within a reasonable time. He stated that Article 6(3) specifically provides that the alleged contemnor is someone who is entitled to defend themselves in person or through a legal assistance of their choosing, and they should have adequate time and facilities to prepare their defence.

12. In Paragraph 5 of his judgment Cobb J identified a number of specific issues, numbering 9, which he said he considered were a useful checklist, which I intend to adopt and consider now

(i)"Whether the respondents have been served with the relevant documents including the notice of hearing". I am quite satisfied in this case that the defendant, I use the word, 'defendant' because that is now the correct terminology since the CPR 81 was amended from 2 October, the defendant, Ms Pervaiz, has clearly been served. I have seen certificates of service for 5 February, which dealt with the amended application to commit. I have also seen a later certificate of service making clear she had received the order of His Honour Judge Clarke dated 21 February, which meant she was therefore aware of the importance of these proceedings and the need to get legal assistance and her right to silence, and the right against self-incrimination, and also satisfied she had notice of this hearing because of her correspondence with this court which appears to have been triggered on receipt of the notice of hearing, and made clear that she was aware of it. As I say, having had the notice of hearing this court also wrote to her again on 8 October making clear that she was expected to attend today.

(ii) Has she had sufficient notice to enable her to prepare for the hearing, which is the second point? Clearly so. This is a case where the application to commit was originally served back in January of this year, and the amended application in February of this year, and because of Covid was adjourned. She has had a very long time to prepare for the hearing.

(iii)Has a reason been advanced for non-appearance? The only real reason that appears to be advanced by the defendant is that she refuses to acknowledge the validity of these proceedings on the basis that she says she had an extant application in the High Court. It has been made clear to her that that is against an order which has been superseded, and, therefore, is irrelevant for the purpose of these proceedings. However, in any event, as was made clear in the note that was sent from the High Court, the High Court does not have jurisdiction in relation to refusal of permission to appeal, and, therefore, it is a totally academic appeal.

(iv) by reference to the nature and circumstances of the defendant's behaviour has she waived her right to be present, i.e. is it reasonable to conclude she knew of or was indifferent to the consequences of the case proceeding in her absence? I think it is very clear in this case that the defendant has waived her right to be present. She quite clearly has no intention of attending. She knows of the hearing but she is indifferent to attending, and she is fully aware of the fact that this case is going to proceed in her absence or is likely to proceed, and I am quite satisfied she has waived her right to be present.

(v) Would an adjournment be likely to secure her attendance or at least facilitate her representation? Regrettably, I do not think that is likely. I note that she has not attended any of the hearings so far. She did not attend the original application for the injunction. She did not attend her application to have an oral reconsideration of permission to appeal in front of His Honour Judge Rochford. She did not attend the first hearing of the committal in front of His Honour Judge Clarke, and she did not attend today. I am very doubtful that if I were to adjourn today that it would secure attendance, nor does there appear to be any intention by her to obtain legal representation.

(vi) What is the disadvantage to her in not being able to present her account of events? Obviously there is plainly a disadvantage because she is not here, but this is actually one of the most simply breaches because the only issue here is access to look at the gas appliances and to carry out an EPC. The correspondence that has taken place from the defendant appears to be of the nature that says she knows full well what the position is, but is not

minded to allow access because she says she has a damages claim. Therefore it is not clear that there is a great disadvantage to her because it is not a nuanced breach; it is a very clear issue, has she allowed access on the date of 1 November? It would appear very clear she did not, and there is no suggestion by her ever in the correspondence that she has allowed access or there is a misunderstanding about this.

(vii) Would there be undue prejudice caused to the claimant by delay? The claimant has now been waiting for over a year to get access to this property for this purpose. It is a landlord; it has obligations. It is a serious matter not being able to check your gas appliances, and carry out an energy performance certificate. It is also right to say that if they want to issue proceedings under Section 21 they may be impinged in doing so, and it certainly appears in correspondence that Ms Pervaiz is aware of that, and there may be an element whereby she is deliberately frustrating that step.

(viii) Would undue prejudice be caused to the forensic process if the application was to proceed in the absence of the defendant? Plainly if one proceeds in the absence of a defendant in relation to a hearing regarding a committal, there is an element in which there is an absence of the forensic process, but in this case one has an affidavit and it is an incredibly simply issue and nobody is unduly prejudiced.

(ix) What about the overriding objective, including the obligation to deal with it justly, expeditiously, and fairly, and including making any order for the purpose of furthering the overriding objective? The court has to very carefully look at the overriding objective and deal with it justly. In this case the overriding objective can be met as if the Court is satisfied that the breach has occurred (which is a fairly straightforward matter in this case) any concern about the fact that she is not present can be dealt with by adjourning sentence and giving her a final opportunity to purge her contempt before the matter comes back before the Court to consider sentence.

13. Therefore, for all those reasons I am satisfied this is a case where despite the absence of the defendant in an application to commit I should proceed.

14. As far as the evidence is concerned, it is extremely simple in this case. Am I satisfied that the necessary requirements have been met? There was a penal notice attached to the original order. Personal service was dispensed with by the order of His Honour Judge Clarke. The order was delivered to the defendant. There is no doubt she knew about it because she wrote to the court about it. She received the letter seeking access, and, indeed, she was present at the property on the date on which access was sought. She has never

suggested she did not have 24 hours' notice. Mr Hicks' affidavit is before the Court. The Defendant has not challenged it in any way. She has not turned up today to challenge it. In those circumstances I am satisfied so that I am sure that there was that breach. I am also satisfied she was served with the application to commit, is aware of the hearing today, and, therefore, that the breach has been proved.

15. In those circumstances, I find that there has been a breach of the order of 29 October 2019. I am very conscious the nature of the breach is such that the contempt could be purged so easily by this lady opening her front door and allowing access for the purpose of this gas inspection. If she is right and she has capped off the gas appliances, it is quite simply incomprehensible why she will not allow someone to come in, and similarly there is no issue, the landlord is entitled to enter in order to carry out an energy performance certificate. Therefore, having found that the breach has occurred, because she is not present and because the Court is clearly not desirous of committing someone to prison for failing to allow access in these circumstances the Court will adjourn in order for there to be sentence at a later date. This will give this lady the final opportunity to purge her contempt by allowing access to her property in order for the inspection of the gas appliances, and to carry out the EPC as was ordered on the previous occasion.

End of Judgment

Transcript from a recording by Ubiqus
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