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IN THE FAMILY COURT  
(Sitting at Cambridge)

No. BV19D10255

197 East Road  
Cambridge, CB1 1BA

Monday, 9 November 2020

Before:

HER HONOUR JUDGE GORDON-SAKER

**(In Private)**

B E T W E E N :

BREIFNE DONEGAN

Petitioner

- and -

EAMONN McELENEY

Respondent

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MS GORE (instructed by Fairhurst Menuhin & Co.) appeared on behalf of the Petitioner.

THE RESPONDENT appeared in Person.

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**A P P R O V E D J U D G M E N T**

JUDGE GORDON-SAKER:

- 1 This application today is by Ms Donegan for the committal to prison of Mr McEleney. Ms Donegan's full name is Breifne Patricia Donegan and she was formally Mrs McEleney. Mr McEleney's full name is Eamonn Jude McEleney (also known as "Edward McEleney"). They are the applicant and respondent to financial remedy proceedings ongoing in this court. The application has been made for the respondent, Mr McEleney, to be committed to prison because he has not complied with court orders. Ms Donegan is represented by counsel; Mr McEleney appears in person.
- 2 I have a bundle of documents provided by the applicant's solicitors which is very helpful and an updated schedule and note and chronology from the applicant's counsel which again is extremely helpful. I also have the court file; it is an extremely large court file, but I have had an opportunity to read that as well.
- 3 Mr McEleney is in person and, therefore, this morning I raised a concern about two procedural matters this being an application for committal. The first was that the order with the penal notice had not been personally served upon Mr McEleney, although he was present when it was made and its terms had been explained to him by District Judge Capon; and the second concern I had was that the application notice did not specify exactly and set out on the application the breaches, but that there were on a separate document attached. Having explored that with the parties, Mr McEleney did not make any submissions about that. He just seems to want to criticise the applicant's solicitors and the process in general.
- 4 Having considered the matter, I took the view that the application could proceed. It was very clear to Mr McEleney, who is plainly an intelligent man, what was required of him and what the penal notice meant and the document containing all the allegations of breaches on it made very clear to him, although they did not appear on the face of the application, what the breaches were. Therefore, in my judgment, the application could proceed.
- 5 The other matter I explained to Mr McEleney at the outset is that he is not obliged to give evidence here because these are quasi criminal proceedings. Judge Capon had also explained that to him and he had recorded on the face of the order that Mr McEleney had been told he could get legal advice and he had also been told that legal aid may be available. I repeated that to Mr McEleney during the hearing that he was not obliged to give evidence. These are quasi criminal; in that it is a criminal standard breach that I have to be satisfied of in relation to the breaches and because they are similar to criminal proceedings he was not obliged to give evidence, but in fact he did give evidence before me.
- 6 I have the statement from Mr Caldwell, Ms Donegan's solicitor, which I have read. He confirmed the truth of that statement on oath and he has added to the bundle, the documents that Mr McEleney has provided since the statement was made and Mr McEleney did not have any cross-examination on the contents of the statement or the documents provided. So this hearing has focused on Mr McEleney's evidence in relation to the breaches. He confirmed the various documents he had sent in, I asked him some questions to fill in some

of the background and then he was cross examined by counsel and I asked the odd question as well.

- 7 The two written replies he has put in are at C1 in my bundle and that is his original reply to the schedule of deficiencies with some documents. It is not dated, but he thinks it was September or October of this year. Then the document he sent in specifically for this hearing with attachments is at E1 of my bundle (and there is obviously a copy in the court file) and that is dated from 5 November. Mr McEleney confirmed that those documents were true.
- 8 Most of the breaches relate to not providing tax returns, not providing bank statements and not providing documentary evidence and he gave initially some evidence about those. He said that he has not sent in his personal tax returns; this seems to have been for about five years now. He had given the information to his accountant and his accountant is looking for more details. But those details have to come from him so he cannot put the blame on his accountant if he does not give the accountant the information to prepare the accounts. He seems to think that his wife would have details of money going in and out of the joint account, although of course he could get the statements for that. In relation to the joint account in Tenerife, she does not have access to that and he dealt with all the banking there. He says that there are properties owned by various companies - I put it as loosely as that because it still is not that clear what properties and what companies he has an interest in - and he says that all of those things in the past went into the joint account. Well, this is dealing with matters in the last few years and they certainly do not feature in the joint account now.
- 9 He said that there had been summary returns filed with Companies House that were completely up to date; in fact, I do not think that is right from what he then went on to say. He said that he will provide his accountant with the information, but cannot do that for some reason at the moment. At one point he referred to not having the time because he is a pensioner. Somewhat facetiously, perhaps, I raised the fact that he told me he played golf at least two days a week so he would have had time to do it instead of doing that. But in any event, as he so rightly says, he is retired. He claims he is not involved in these businesses now and therefore he would have ample time to sort out the documents. He says he does not have access to documents about the property in Tenerife, he bought it through a notary and he does not appear to me to have taken any steps to track down the documents.
- 10 Mr McEleney was cross-examined about an updated schedule for the day's hearing, which counsel had kindly prepared to keep us fairly focused on the key issues today. One of the first one of those, which is in fact item 1 on the original schedule in any event, relates to his failure to provide evidence of the sub-lease of the Emery apartment block. His reply, and he has been asked about this more than once, is to say there is no income from the sub-lease. There was an initial payment of £192,500 four years ago and that was all and he provided an office copy entry. He did not provide the evidence in relation to the sub-lease which he was ordered to provide and he made no attempt to do so. He was evasive. He says he does not have it and that the person who took on the sub-lease does not either. I am afraid I do not

believe him. I think Mr McEleney is being deliberately evasive because he does not want this court to have a clear picture of his finances.

- 11 He was asked about rental monies for the past five years from properties at 12 and 14 Old County Road, Dublin. He certainly used to get money from them; I have seen bank statements showing he was receiving €4,000 a month, but now apparently these properties are derelict. I am afraid I have my doubts about that. I propose to make an order that a surveyor will value the properties now and provide an estimate of the likely rental income and within three days, and Mr Caldwell has kindly said he can do this, Mr Caldwell will provide three potential surveyors to value the property to Mr McEleney. Mr McEleney within three days will pick one of those and refer to Mr Caldwell. The next day Mr Caldwell will send a joint letter of instruction (it will be the standard letter of instruction) asking the surveyor to value those properties and give an estimate of their likely rental income and that can be provided to the court within three weeks' time. If Mr McEleney does not reply to Mr Caldwell's three people put forward, then Mr Caldwell can simply on behalf of Ms Donegan pick one of the three and instruct them because I am satisfied that Mr McEleney is deliberately withholding the information about the rental income and the state of those properties.
- 12 In relation to a Mr Paddy Smith (sometimes known as "Patrick Smith"), the respondent was supposed to provide evidence of his agreements with this gentleman. He talks about him having interest in the Dublin properties and it is all extremely opaque. It transpires now that Mr Smith has died. His widow does not have a copy, but she apparently is somehow taking over the running of these various properties. Mr Smith kept the income and paid the bills. Apparently, Mr McEleney now owes him or his widow a fortune but they are all derelict properties as well. I am afraid I just do not believe a word of it. There is plainly a system he has of putting properties in other people's names and then pretending they are nothing to do with him and hiding the documents, indeed if there are any documents, and he is not producing them to this court.
- 13 In relation to properties in this country and companies here, apparently, they are administered by a Mrs Freelove. He does not get any money from those as well; they are in holding companies. He is apparently the only shareholder and director of the companies, but he knows nothing about what goes on.
- 14 In terms of what Mr McEleney does actually own, it is two apartments in Tenerife. He also said he had some garages. He hastily backtracked on that and said he just had one garage going with the properties. I do not believe that, but that is not something on which I am asked to make a finding. He does get the rental income on a house in Dublin which is in his daughter's name and an apartment in Tenerife. There is a reference to Primrose Place, which, in fact, is obviously now Ms Donegan's property.
- 15 He explained again that he has not provided a tax return because the accountant is waiting for the information. He kept telling me he was retired and he had no income; yet, during the course of this hearing two different mobile phones went off and he was reading the

messages. It seems to me people want to get hold of him probably in relation to business matters. He also talked about a lady who was his PA who deals with administrative matters so plainly he is not a retired man just sitting in Tenerife on a golf course, he is running these businesses from there.

- 16 In relation to his tax returns, he simply has not provided the information to this court or to his accountant. He has the obligation to do that; there is a court order that he does so and he has not. Turning to item 5 on the schedule I have for today, he was supposed to provide copies of bank statements for his HSBC account. He provided one bank statement for the wrong period and still has not provided any bank statements. It is quite clear to me that he has no intention of providing the information. He talked about having problems with getting the statements because the account was inactive. It is not difficult to get statements going back years from accounts. He also said that he had not been to Ireland for months; in fact, he was there last week and anyone can get these account statements remotely after all, in relation to the Tenerife account, he was suggesting that Ms Donegan should be getting them from Tenerife even though she has not been there and he lives there.
- 17 Moving on to the company accounts and the tax returns, he has been asked to provide these and he has not. He still cannot explain that. I just think he has no intention of filing them and he wants to frustrate the court process. When it suited Mr McEleney, he was able to describe companies of which he is a director along with details and transactions. When it suited him, he could not remember anything even, amazingly, the name of his accountant in Cambridge. He gave me a lot of details about what the various companies which begin with the title "Emery" do. One of them was a restaurant, one of them owns property and is a trading company and there is a property company. Money comes out of one of those accounts to provide the maintenance pending suit for Ms Donegan and money goes into that from various accounts. Apparently there is another director, a Mr Garcia, who runs these properties and we were given great long stories about that. He said he did not have the details of the accounts at his fingertips. When it suited him, he did have a lot of information at his fingertips. He said that Mr Garcia operated the restaurant and paid the bills and there is a new leaseholder paying rent as well and, from the bank statements we do have, there is money going into them from other people for rent. There is money going out for Ms Donegan's maintenance and Mr McEleney is just deliberately failing to produce a complete run of bank statements as he should do.
- 18 In relation to the Lloyds Bank statements which he produced some of, he has not explained properly how these accounts are used and what happens to them. He says he does accept that he has an interest in the Emery House Trading Company and tried to provide the explanation in cross-examination today, but he plainly should have done that before. He did, at least, accept that he has a beneficial interest in the Lloyds Bank account with the Emery House Trading Company (the account ending 36955068). So I think rather belatedly item 7 on this schedule has just about been complied with.
- 19 The last item on this schedule is in relation to the Tenerife bank accounts which I have touched on already. He claims that this account was cleared out by Ms Donegan; on his account, she took out a couple of thousand pounds on a debit card. He has produced no

evidence to substantiate that claim. In any event, that does not deal with his failings. He runs this account; she no longer has access to it, and he is clearly in breach of the order to provide the bank statements for this account.

- 20 In his evidence, Mr McEleney diverts his answers to complaints about other things rather than answering the question. It was quite plain to me that Mr McEleney had no intention of complying with these court orders. He thinks that by a little bit of chat and saying “I’m eighty years old and I’m a pensioner” he is going to get away with it. There is going to come a point where that will not happen. Mr McEleney was first ordered to provide information on 25 February this year. A penal notice was put on the order. He was given a further chance to provide information on the 12 May order. On 2 July he was given a further chance to comply and there is the schedule which I have updated at D10 for what he was meant to provide.
- 21 Mr McEleney says, “Oh, I’m very happy to provide the information when I get it” and he made an attempt to blame COVID-19 despite the fact that this breach began before we had even heard of COVID-19. He claims some documents were left in Primrose Close. I am satisfied he has collected his belongings from Primrose Close. If there was anything there, Ms Donegan would have provided it as she really wants an end to all of this and she just wants a fair share of her money.
- 22 So on the breaches (D10), I am satisfied beyond reasonable doubt, having heard the evidence and looked at the documents that have been provided, that the respondent has failed to provide the evidence of the sub-lease of the Emery Apartment Block and the income derived therefrom.
- 23 I am satisfied he has failed to provide evidence of the rental monies derived over the past five years from 12 and 14 Old County Road, Dublin. I am satisfied he has failed to provide evidence of his agreement with Paddy Smith in relation to the Dublin properties listed.
- 24 I am satisfied that he has failed to provide evidence of his tax returns - that is his own and the companies - filed in the UK and in Eire for the last five years and I am not satisfied about his excuses. He failed to provide bank statements for the HSBC account and he has failed to provide evidence from his accountant.
- 25 In relation to the Lloyds Bank account, he has just about complied, rather belatedly. In relation to the other accounts he is supposed to provide the information of and the details in relation to the Tenerife accounts, he has not done so. So I am satisfied beyond reasonable doubt that Mr McEleney is in breach of the order and that it would be open to me to commit him to prison.
- 26 This is a rather sad case. Ms Donegan is seventy-one; Mr McEleney is eighty. They married many years ago. It was a long marriage, and it was preceded by a long period of cohabitation. There are probably (and I say “probably” because he is doing his very best to keep them hidden) substantial assets that Mr McEleney owns or controls through third parties. This matter could be resolved by an amicable resolution if he provided the

information and then Ms Donegan could provide a proper considered suggestion of the amount of money she would be willing to settle for and he too would make his proposals.

- 27 The parties are already divorced. Ms Donegan issued her Form A last year and her solicitor from the start tried to engage constructively with Mr McEleney by sending him, for example, a draft Form E. Mr McEleney thought he might take issue with the court's jurisdiction. He did not file or serve a Form A; he did not comply with the order for documentary evidence. As I say, he is plainly an intelligent man, he has a grasp of all the details of his finances, and this is deliberate and wilful failure to comply with court orders.
- 28 I have considered very seriously sending him to prison. The difficulty is that, if he goes to prison, he is probably less likely to comply with the court orders. I thought should I give him a short sentence in the hope he will comply when he comes out of prison. He suggested that he is an "old man" and all of this is a bit of a strain, but I notice that he has travelled here for today. He spends his time here, he spends his time in Tenerife, he spends his time in Dublin. He has access to the internet, so he could easily comply with these court orders.
- 29 It is now twenty to four. At about three o'clock, I was very seriously of the view that I must send Mr McEleney to prison in the hope that when he came out of prison he would comply knowing that another prison sentence would await him. But Ms Donegan through her counsel does not want him sent to prison. I quite understand that. What she wants is an end to all of this. So my decision at the end of this occasion is that I should sentence to Mr McEleney to a period of six months' in prison, but I will suspend that period of six months provided he complies with this order and within one month of today he provides all the information that I am hoping Ms Gore will itemise in an order following what has been this hearing.
- 30 If Mr McEleney does not provide all of that information within a month from today, then unless there is a good reason the matter will come back before me and the suspended sentence is likely to be activated and that will be six months' imprisonment immediately.
- 31 The court cannot keep giving Mr McEleney time to comply with its court orders. The court does not fall for the "I'm a simple person pensioner who doesn't understand what's going on". It is very clear to me Mr McEleney fully understands what is going on. This is wilful and deliberate non-compliance. As I say, there will be a sentence of six months. It will be suspended on terms Mr McEleney complies and provides all the necessary documents within a month. If you do not do so, this matter will be back in my list and I will find a date in a moment. You will have to attend and, unless there has been compliance or there is a very good reason for non-compliance, you are likely to go to prison.