

TRANSCRIPT OF PROCEEDINGS

Ref. F00BA281

IN THE BRISTOL MAGISTRATES' COURT

Marlborough Street
Bristol

Before HIS HONOUR JUDGE RALTON

IN THE MATTER OF

THE GUINNESS PARTNERSHIP (Claimant)

-v-

SARAH ANSLOW (Defendant)

MS A KELLY appeared on behalf of the Claimant
THE DEFENDANT appeared in person

JUDGMENT
31st JANUARY 2022, 12.31-13.03
(AS APPROVED)

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JUDGE RALTON:

1. This is the ex tempore judgment of the court, upon committal proceedings brought by a social landlord, The Guinness Partnership, against its tenant, Mrs Sarah Anslow, for allegedly breaching an injunction order made in the county court at Bath on the 9th of August 2019. Although these proceedings belong in Bath, they are, today, being heard in the magistrates' court in Bristol as a building more accessible to the defendant, Mrs Anslow, by reason of her disabilities. In fact, Mrs Anslow has chosen to attend by telephone and she has been able to participate in the hearing today.
2. Mrs Anslow is not represented. The claimant is represented, and I am assisted by counsel, Ms Kelly, for the claimant.
3. The court has heard formal evidence given in affidavit form and confirmed by the deponents of the affidavits on behalf of The Guinness Partnership. The court has invited Mrs Anslow to give evidence if she so wished. She has not, but at times she has made a number of points which I take as submission points.
4. This is not a typical committal hearing in that this is not a typical case of alleged bad behaviour. In fact, what this case is all about is a landlord trying to get into a tenant's flat in order to carry out essential repairs. Unfortunately, it appears that there has been such a standoff between landlord and tenant that the only way to resolve the standoff is by these committal proceedings. I am going to commence by referring to the legal proceedings to date because it is important to observe that a number of attempts have been made to find solutions other than via committal proceedings.
5. So, by way of introduction, The Guinness Partnership Limited is the landlord of what appears to be a period property that is divided up into flats, and one of the properties is number 8A New King Street. This property was let by the landlord to the tenant under a lease made back on the 27th of October 1983. Amongst other things, the lease agreement contains a covenant, or, if you prefer, a formal promise, on the part of the tenant at clause 3.6 to permit the landlord or his agent, without or without workmen, at any reasonable hours in the daytime to enter upon the premises for the purpose of repairing, altering or maintaining any part of the property. There are certain obligations in the tenancy agreement on the landlord, for example, with respect to keeping matters such as the sewers and drainage in good and tenantable repair and condition. There is, furthermore, statutory overlay, for example, in the form of the Landlord and Tenant Act 1985, which imposes further obligations on the landlord with respect to such matters as clean and dirty water.
6. The application was made for an injunction back in August of 2019. It is made under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014. That causes me to raise my eyebrows somewhat, but there would also be grounds for seeking an injunction order at common law to enforce the tenant's covenant within the lease. The application was all about securing access to the property in order to carry out repairs. It was supported by a witness statement of the then tenancy enforcement case worker of the claimant, and he was Mr Glynn John, who, in fact, gave me formal sworn evidence today, but I am referring at the moment to his statement in support of the injunction order.
7. It was well-known to the landlord that the defendant is a vulnerable person with serious and significant health issues rendering her really rather disabled. If anything, that somewhat adds to the urgency of the landlord's concerns which can be summarised as water and sewage type leakage penetrating the property as a whole, including the defendant's premises. Indeed,

so bad was the situation that the Bath and North East Somerset Council served an abatement notice on the landlord on the 19th of June 2019.

8. The application was for mandatory orders requiring Mrs Anslow, on notice being given, to allow access to her property to resolve a leak from her property into the communal area of foul wastewater, and on notice being given to vacate her property for the duration of those works with alternative accommodation being made available by the claimant during the works not expected to be longer than five working days.

9. An injunction order was made on, it seems, the 9th of August 2019, essentially in the form of the order sought by the claimant. It appears that the order, although served, was not complied with. And that resulted in an application notice being brought under the old Civil Procedure Rules with respect to committal applications as long ago as the 13th March 2020. The application informed the court and the defendant that the landlord was seeking committal of the defendant for breach of the injunction order dated 21st of August 2019; Clauses 1, 2 and 3 were breached 30th September 2019; the defendant refused to engage in discussion regarding the works required on 19th December 2019 and 24th January 2020, breaching Clauses 1 and 2. A reference was made to the affidavits, in particular of Glynn John and Emma Curtis.

10. That application first came before District Judge Byass who, on the 13th of March 2020, made an order without a hearing, requiring personal service on the defendant and listing the matter for a hearing on the 4th of May 2020. There was then an e-mail from the claimant resulting in a further order being made on the 23rd of April 2020, adjourning the May 2020 hearing and re-listing the matter for the 4th of August 2020.

11. On the 4th of August 2020, there was a hearing before Deputy District Judge Napier and I see that attending before the deputy district judge were the solicitor for the landlord and Mrs Anslow in person by way of a telephone hearing. I note that rather than proceed with the committal proceedings, Deputy District Judge Napier adjourned the committal proceedings and made a separate order requiring the landlord to give Mrs Anslow four weeks' notice of work which required her to vacate the property; requiring the landlord to inform Mrs Anslow of alternative proposed accommodation; making an order that the landlord be responsible for providing Mrs Anslow with suitable transport; and for Mrs Anslow to provide the landlord with a copy of her care plan and any other documents that the landlord may need in order to put suitable arrangements in place. And, on that basis, the hearing was adjourned to the 19th of November 2020.

12. Unfortunately, it appears that that hoped for solution created by Deputy District Judge Napier was not complied with by Mrs Anslow, resulting in a further contempt application, this time made under the new Part 81 of the Civil Procedure Rules and in the form of the new N600 against Mrs Anslow for, again, being in breach of the original injunction order as set out in box 7 of the committal application, the details being particularised in box 12:-
- on the 24th of August 2020, setting out delivery of a letter.
- on the 26th of August, Mrs Anslow refusing assistance of alternative accommodation
- not being contactable on the 27th of August,
- and generally not co-operating by not replying to a voicemail or responding to a text message of the 17th of September 2020.

13. It would appear that at this time, or thereabouts, Mrs Anslow was able to acquire legal representation and assistance from Shelter legal services and on the 13th of November 2020,

Shelter, on behalf of Mrs Anslow, made an application for the committal hearing, listed for the 19th of November 2020, to be vacated and re-listed on the first available date after the 1st of February 2021 and attached a consent order. Within the body of the application notice, they said,

“The defendant is asking that the committal hearing on 19th of November 2020 is vacated but said that has only obtained legal representation from Shelter in the last few days so there has been no capacity to provide representation from ...”

I think, it is supposed to read,”

“ ... the very few remaining legal aid practitioners in Bath. The purpose of the adjournment is to enable the parties to negotiate a settlement in the terms set out in the consent order. The defendant’s representatives have arranged for an independent survey report to be carried out by Pinnacle Surveyors on 25th November 2020. The defendant has agreed to accept the findings of the report, and if advised to provide access for repairs to be carried out. Consent order attached makes provision for the report and a subsequent (inaudible) if advised.”

14. At the Weston-Super-Mare County Court on the 23rd of November 2020, District Judge Field made a suitable order on terms as set out in the schedule, and the committal hearing was adjourned to the 18th of March 2021. Indeed, there was a further adjournment on the 10th of March 2021.

15. Incidentally, that expert report has been provided remembering that it was commissioned by Shelter and there is a report from Chris Halliwell and it is dated the 9th of December 2020. So, remembering that this is, in effect, Mrs Anslow’s expert, this expert went into the property on the 25th of November 2020. He carried out a number of observations. Rather than read out the entirety of the report, one can summarise it as a report which identified a number of significant and necessary works that required carrying out in order to investigate, assess and rectify leakage. There have been a number of cross-references to the soil stack. This expert has, again, referred to the soil stack. And by this time, an additional complication has been identified concerning the risk of there being asbestos, remembering that this is the defendant’s expert.

16. Unfortunately, Shelter and the defendant parted company. Shelter made an application dated the 13th of May 2021 to be removed from the court record, and that was duly granted.

17. On the 8th of October 2021, District Judge Byass listed the committal proceedings for directions in Bath on the 24th of November; that hearing was adjourned to the 3rd of December. It is apparent that only Ms Kelly, counsel for the landlord, attended the hearing. It appears that the tenant, Mrs Anslow, did send some documents into the court. District Judge Byass made a number of recitals and made a number of orders, making plain that the hearing today was to be a hearing of the application to commit Mrs Anslow. The district judge made provision for Mrs Anslow to attend remotely by telephone if she so wished and made provision, also, for the filing of a bundle of papers; that has duly taken place. And that, therefore, brings us to the hearing today before me on Monday, the 31st of January 2022.

18. At the outset of the hearing, I enquired of Mrs Anslow whether or not she had legal representation. She does not have legal representation. She does not appear to be in the course of obtaining legal representation. She wants legal representation but, of course, it is very difficult to find; there are few providers. One of the most skilled providers is Shelter, and, unfortunately, the solicitor/client relationship broke down. Criminal legal aid is, of course, available but the number of firms that practice in this area is comparatively modest. Given the number of adjournments that there have been to date and given the number of opportunities there have been for Mrs Anslow to secure legal representation, I could not have any confidence that if I adjourned again Mrs Anslow would re-appear with legal representation on the next occasion. However, there is still the possibility that she might.

19. I also sought to identify, at the outset of this hearing, what the problem was and what the solution might be. Time and again in her submissions rather than her evidence, Mrs Anslow's position seems to be this; that she does not accept that there is any causative fault within her apartment or flat responsible for the leakage. In other words, she does not seem to accept that the landlord should be able to go into the flat because she refuses to believe that there is any defect within her flat responsible for the leakage. Of course, that matters not so far as the pure committal proceedings are concerned, because the court has already made an order, which Mrs Anslow has not sought to set aside, which requires her to allow the landlord in to inspect and carry out whatever repairs are necessary. So that rather ignores the point of the order that has already been made.

20. But a point that does need to be made is that Mrs Anslow's position flies in the face of copious evidence before the court that there are very real problems within the flat, as identified by Mrs Anslow's own expert to whom I have already referred, especially with respect to the soil stack which has, thus far, received only a temporary repair by way of a form of balloon designed to stop the leakage for the time being. There is obviously a significant hygiene issue here which could very much impact on the health and welfare of human beings, not least Mrs Anslow, and the concern also would be of the damp causing further deterioration in the property.

21. Now, I have heard evidence from Mr Glynn John who is no longer part of The Guinness Partnership but Mr John was able to confirm his affidavits of the 13th of March 2020, the 21st of October 2020, and the 24th of May 2021. He was asked certain questions by Mrs Anslow. But the questions do not really go to the heart of the problem. Questions relating to problems caused by squatters, problems caused by other parts of the building being in disrepair do not at least deal with the matter of sorting out her flat.

22. Emma Curtis confirmed her affidavit of the 12th of March 2020. Mrs Anslow chose not to ask Mrs Curtis any questions.

23. I have heard evidence from Miss Rhodes; that evidence does not go in support of the committal proceedings, but it sets out the narrative through 2021, in particular about whether or not the court suggested solutions, in particular through the order of Deputy District Judge Napier had been complied with; unfortunately not.

24. The question for the court first and foremost is, is the court satisfied that it is sure that Mrs Anslow has breached the injunction order made back in August 2019. This is a binary question; either she has or she has not.

25. So, the four charges against Mrs Anslow have been helpfully summarised by counsel; the first is on the 30th of September 2019, did or did not Mrs Anslow fail to provide access as notified to her by the landlord in breach of paragraphs 1 and 3 of the injunction order? The answer is she did so fail. Secondly, on the 30th of September 2019, did she or did she not fail to vacate the property for the duration of the intended works in breach of paragraphs 1 and 3? The answer is, yes, she did so fail. The third charge is between the 4th of August 2020 and the 30th of September 2020, did she or did she not fail to co-operate for the landlord to make arrangements for access to property in breach of paragraph 3? And on the evidence, yes, she did so fail. And on the 29th of March 2021, did Mrs Anslow fail to provide access as notified to her by the landlord in breach of paragraphs 1 and 3? And the answer is, yes, she did so fail. Therefore, Mrs Anslow is in breach of the injunction orders.

26. The next question is what should the court do? The court's powers are comparatively limited. The court can make an order imprisoning Mrs Anslow, and it could imprison her for a term of up to two years. If it came to the conclusion that it should imprison Mrs Anslow, it might decide to suspend the sentence for a period of time, not least to see if there is compliance with the injunction order. The court may choose to fine Mrs Anslow a sum of money. It may choose to fine her a small sum of money, it may choose to fine her a large sum of money. The court may choose to do nothing at all.

27. As I outlined at the start of these proceedings, there is a risk that the landlord relies on the findings of these committal proceedings for the purpose of bringing possession proceedings, in other words, to evict Mrs Anslow from the property itself; that would not be as part of committal proceedings but it could be as part of possession proceedings.

28. Mrs Anslow is now in a very serious predicament. It is absolutely essential that Mrs Anslow has another go at obtaining legal advice, and it may be that Mrs Anslow is more encouraged to now obtain legal advice and I am going to require the landlord to send to Mrs Anslow a list of such practitioners that it knows in this area for Mrs Anslow to attempt to instruct. But the responsibility for instructing solicitors lies not with the landlord nor with the court but with Mrs Anslow.

29. I would also ask Mrs Anslow to reflect. The matter is this; what everyone would appear to want is for Mrs Anslow to be able to peaceably and quietly occupy her flat in a state of repair without anyone fretting that damage may be caused by ongoing leakage either into or out of Mrs Anslow's flat. It may be that definitive diagnosis can only be given after five days' of work. It is quite often the case with water and drainage problems that there has to be a tracing exercise to get to the root of the problem, and quite often there is more than one problem. But I am confident that if Mrs Anslow could find a way to co-operate properly with her landlord, then everything that needs to be done could be done with the property. And more to the point, these legal proceedings and ongoing threats of committals, being sent to prison, fines and such like could be put to one side.

30. Mrs Anslow needs to know that what this court wants to achieve for the benefit of everyone is compliance with its injunction orders. It does not want to have to be so coercive. But at the end of the day, a disabled person must obey the law as much as a non-disabled person. These re-adjustments have been made by this court as much as it is able to, but this landlord needs to be able to comply with his obligations under the tenancy agreement and also its statutory obligations, and there is to be no more awkwardness.

31. That concludes this judgment. But the direction I shall now make is to adjourn to a hearing on the first available date after, I would have thought, 1st of March 2022, with a time estimate of two hours before myself at the Bristol Magistrates' Court. I will, again, make provision for Mrs Anslow to be able to attend either remotely by video-link or by telephone if video-link is beyond her. And, of course Mrs Anslow, there is disabled access at this building. If you wish to attend in person, you could and I would make a requirement on the part of the landlord to provide transport of you to court if that is what you so wish. So you have those options to ensure that you can participate.

This transcript has been approved by the Judge