Case No: CA-2004-002104G

IN THE COURT OF APPEAL (CIVIL DIVISION)

[2023] EWCA CIV 586

The Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday 29 March 2023

Before:

LADY JUSTICE SIMLER

Between:

GILLIAN RIDLEY

Applicant

- and -

BLACKPOOL COUNTY COURT

Respondent

Transcript of Epiq Europe Ltd, Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
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MR MEHDI SHAMLOU (McKenzie Friend) appeared on behalf of the **Applicant**

The **Respondent** did not appear and was not represented

Judgment

LADY JUSTICE SIMLER:

Introduction

1. This is a hearing directed by me to consider whether to make a civil restraint order in this case. On the last occasion on which I dealt with a repeat application by Mr Shamlou to reopen the question of permission to appeal in this case, my order directed that the matter should be listed for an oral hearing on the first convenient date in order for the court to consider whether it was appropriate to make a civil restraint order. That order was made by me on 9 February 2023 and I directed that Mr Shamlou should attend the oral hearing if he wished to make representations about why such an order should not be made.

2. Mr Shamlou has attended today and has made submissions opposing the making of an order. He has invited me to consider three particular documents. These include a letter, dated 19 October 2017, from his consultant psychiatrist, Dr Sharon Beattie, who had at that stage been actively involved in his care since 7 September 2017. She confirmed, following a review of his psychiatric notes, that he was diagnosed with paranoid schizophrenia in 2005 and had been involved with mental health services since that time. Dr Beattie said that schizophrenia can impact on a person's concentration and ability to process information, particularly when that person is distracted and preoccupied, and also that schizophrenia has cognitive symptoms that have the potential to impact one's ability to work towards specific goals. Having read this letter and heard from Mr Shamlou, I have been cognisant throughout this hearing of the potential for those symptoms and his condition to impact on Mr Shamlou's ability to make submissions to me and I have given him the opportunity for additional time to think and to organise his thoughts in order to make submissions.

3. I shall describe some of the points made by Mr Shamlou about the merits of the underlying application for judicial review shortly, but the overarching point Mr Shamlou made today is that, because of his mental health condition, I should give him a further opportunity to make an application to reopen that would address the question of the lengthy delay in making his original application for judicial review heard by Richards J. That delay, he submitted, was a product of his mental health condition and also the police harassment he says he experienced, including arrests and a mock abduction, all of which were set out in an affidavit he prepared in 2005.

The background proceedings

4. The background to these proceedings is lengthy and procedurally complicated. I do not begin to provide a full summary of it. I can say that I have been provided over the years with more than eight lever-arch files containing documents relating to those proceedings and in support of the various applications Mr Shamlou has made. I have read the documents provided and have a good understanding of the factual and procedural background.

5. In short, Gillian Ridley operated a pizza takeaway in Preston at Unit 2, 68-74 Lytham Road, Freckleton in Lancashire ("the Property"). She had a business tenancy as a tenant by assignment. In 2001, the landlord applied to levy distress in respect of service

charges that were said to remain unpaid. Ms Ridley defended the proceedings and sought an injunction. The application was heard by DJ Pickup, who refused to grant Ms Ridley an injunction on 26 July 2001.

6. In due course notice to terminate the tenancy was given in 2002. Ms Ridley remained unwilling to give up possession of the Property. There was an application for forfeiture, but this was dismissed. Ms Ridley then applied for a new tenancy in respect of the Property under section 24 of the Landlord and Tenant Act 1954, but the application was issued outside the relevant time limits and failed to comply with the relevant rules. The application was heard by DJ Flanagan, who refused it on 18 October 2002 because it was brought outside the permitted time limit. HHJ Appleton refused permission to appeal that order on 7 November 2002.

7. On 19 June 2002, Ms Ridley obtained a judgment in her favour from DJ Buckley. However, on 20 March 2003, HHJ Maddox allowed an appeal from that decision and set it aside. Further, Ms Ridley was ordered to give up possession of the Property by DJ Turner on 24 April 2003.

8. Rather than pursue an appeal on the merits to this court, Ms Ridley applied instead for permission to bring proceedings for judicial review in respect of four of the adverse decisions made against her, those being:

(i) the decision of 26 July 2001 refusing to grant an injunction or discharging an injunction;
(ii) the decision of 18 October 2002 dismissing the claim for a new tenancy;
(iii) the decision of HHJ Maddox of 20 March 2003 setting aside the judgment; and
(iv) the decision of DJ Turner of 24 April 2003 granting a possession order in respect of the Property.

9. Ms Ridley raised arguments, amongst others, in her application for permission to apply for judicial review to the effect that the litigation process had been corrupted by fraud amongst the judiciary in relation to the sequence of orders and decisions which I have just described. She also contended that there were administrative mistakes in the court processes and relied on these as supporting the contention that the proceedings had been corrupted by fraud.

10. The application for permission to apply for judicial review was initially refused on the papers by Sullivan J on 4 June 2003. His reasons were that it was brought out of time, that it failed to identify any arguable public law error and that there was no jurisdiction for an application for judicial review in the circumstances of this case.

11. Ms Ridley renewed her application at an oral hearing before Richards J on 23 July 2003. Richards J also refused permission to apply for judicial review. He held that the application was made out of time and that no good reason had been shown why time should be extended. In any event, he also held that the application was inappropriate

because a challenge to the merits of the impugned decisions should have been pursued by way of an appeal to the Court of Appeal, which could have quashed the decisions had it upheld the appeal. Judicial review was not the appropriate avenue for pursuing these arguments.

12. Richards J addressed the substantive issues raised on Ms Ridley's behalf by Mr Shamlou, at paragraphs 10 to 12 of his judgment. Those issues included the allegation that the various judges in the County Court had no jurisdiction to make the orders that they made and that there were a variety of procedural errors. Richards J said at paragraph 10 that he had no reason whatsoever to doubt that HHJ Maddox had the jurisdiction to make the order of 20 March 2003 and that the decision made by DJ Turner on 24 April 2003 (granting a possession order) appeared to fall well within the terms of the relevant practice direction. Richards J expressed the view as follows:

> "I doubt very much whether there is any point of substance raised in relation to the jurisdictional procedural issues, nor do I think that there is anything of substance in relation to the other matters canvassed before me."

13. However, despite those provisional conclusions, Richards J reached no final view on any of these points, as he explained at paragraph 11, because of the more fundamental point relating to this application, namely that the Administrative Court on judicial review does not normally entertain challenges to decisions of judges in the County Court because there is a structure of appeals within the County Court and from that court to the High Court or the Court of Appeal depending on the nature of the case. Appeals could have been brought in relation to all matters ventilated by Mr Shamlou on Ms Ridley's behalf and Richards J made clear that an appeal was the appropriate means of challenging judgments and orders made in the County Court. An appeal would have been subject to the requirement of permission and other procedural limitations, but those conditions did not affect the basic point that an appeal on the merits was the appropriate avenue and its availability rendered judicial review inappropriate in this case.

14. Mr Shamlou has criticised that judgment, as he is perfectly entitled to do, this morning. He has submitted to me, as he has done in his various applications throughout these proceedings, that all of the judges, and in particular Richards J, ignored paragraph 56 of *Sivasubramaniam v Wandsworth County Court* [2002] EWCA Civ 1738, which articulated the principle that there may be rare cases where the jurisdiction of a judge in the County Court can be challenged on judicial review and an appeal is inappropriate. He has submitted that this was a proper case for judicial review under that principle and, moreover, that Ms Ridley had good reasons for an extension of time in which to pursue her application for judicial review. The procedural errors and the want of jurisdiction in the County Court made this a rare case for judicial review and reflected breaches of Gillian Ridley's fair trial rights. The County Court judgments were all nullities, and they interfered disproportionately with her article 1 protocol 1 rights.

15. I reject that submission as a matter of fact and am entirely satisfied that it has no arguable merit. Paragraph 12 of Richards J's judgment, although it made no express reference to the principle in paragraph 56 of *Sivasubramaniam*, undoubtedly addressed it and concluded that there was nothing in the circumstances of the present case that could justify what is an exceptional course of allowing a County Court order or judgment to be challenged by way of judicial review. That was unarguably correct and is a complete answer to the points made this morning.

16. Notwithstanding that decision, which, as I have already indicated, was made on the basis of the application being made out of time and there being no good reason to extend time, Ms Ridley sought permission to appeal the refusal of permission to apply for judicial review. She also sought an extension of time. The permission application was heard in this court on 21 April 2005 before Pill LJ. The hearing took place in the absence of Ms Ridley, but Mr Shamlou was present and made submissions on her behalf.

17. Pill LJ set out the background. He noted that Ms Ridley had been declared bankrupt so had no standing to make the application, but nevertheless addressed the merits. He agreed with the reasons given by Richards J for refusing to extend time, having concluded that the application for judicial review was out of time. Pill LJ found no grounds to justify the grant of a lengthy extension of time. He also observed that there was no material to justify the suggestion that there had been a conspiracy amongst the judiciary in relation to the sequence of orders made in the County Court. If errors were made, they should have been pursued within the ordinary appeal system in so far as they were pursued at all. Pill LJ said that he could "find nothing in the decisions of the judges which would justify the exceptional course of this court intervening in decisions of the County Court". Thus, and again without making express reference to paragraph 56 of *Sivasubramaniam*, he addressed the point of principle in that case and made clear that there was nothing to suggest that this was one of those rare cases falling within that principle.

18. Ms Ridley died in 2007 and, as I understand the position put forward by Mr Shamlou in the material I have read, Mr Shamlou who was married to her until their divorce on 21 December 2005, was assigned the right by Ms Ridley to bring these judicial review proceedings by a deed of gift on 8 March 2005. I have proceeded on the basis, but without deciding the point, that Mr Shamlou therefore has standing in relation to these judicial review proceedings.

19. Since 2005 and before her death, Ms Ridley and Mr Shamlou have persisted in making applications relating to these proceedings that have been declared to be totally without merit. There have been seven applications to reopen the order made by Pill LJ in 2005 refusing permission to appeal. They are a refusal to reopen by Pill LJ on 12 January 2009, a refusal by Beatson LJ dated 12 November 2015, a further refusal by Beatson LJ dated 25 January 2018, a refusal by Haddon-Cave LJ dated 15 November 2019, who declared that the application to reopen was hopeless and vexatious, and three orders by me dated 17 February 2021, 17 June 2022 and 9 February 2023.

20. In addition to Haddon-Cave LJ's declaration just referred to, four of the refusals to reopen were declared to be totally without merit. The first was the order of Beatson LJ refusing permission on 25 January 2018. This was followed on 21 February 2021 when I refused the application with the same certification, and again on 17 June 2022 when I certified the application to be totally without merit, and finally my order dated 9 February 2023 when I declared the seventh application to reopen as being totally without merit.

The legal framework

21. I shall now describe the legal framework. CPR rule 3.11 gives the court power to make a civil restraint order ("CRO") against a party who has issued claims or made applications which are totally without merit. There are three types of CRO: a limited CRO, an extended CRO or a general CRO.

22. CPR 3.11 provides that the procedure for making CROs is set out in Practice Direction 3C, paragraph 3.1(1) of which provides that:

> "An extended civil restraint order may be made by—
>
> (1) a judge of the Court of Appeal …
> where a party has persistently issued claims or made applications which are totally without merit."

23. Practice Direction 3C paragraph 2 sets out the requirements for a limited civil restraint order. These may be made by a judge of any court against a party who has made two or more applications which are totally without merit and their effect is to restrain that party from "making any further applications in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order". If a party against whom such an order is made issues an application without the court's permission, it will be dismissed automatically without the need for a further order or for the other party to respond to it: paragraph 2.3(1). Further if a party repeatedly makes applications for permission which are totally without merit, the court can direct that, if he makes any further such applications, the decision to dismiss it will be final without any right of appeal unless otherwise provided for: paragraph 2.3(2).

24. Extended CROs are governed by paragraph 3.1, which provides that they can be made "where a party has persistently issued claims or made applications which are totally without merit" The effect of an extended CRO in the case of an order granted by the Court of Appeal is to restrain a person subject to the order "from issuing claims or making applications" in any court identified by the order "concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order". Thus, an extended CRO goes further than a limited CRO, both because it restrains a party from issuing new claims and because it restrains the party from doing so on any matter involving or relating to or touching upon or leading to the proceedings in which it was made. Paragraphs 3.3(1) and (2) correspond to the paragraphs in Practice Direction 3C paragraph 2.3(1) and (2), providing for the automatic striking out or

dismissal of new claims or applications made in breach of the order and for a power to direct that a decision to dismiss a further application for permission which is totally without will be final without a right of appeal unless otherwise stated.

25. Although the word "persistently" in paragraph 3.1(3) is not defined, it is now well established that it requires at least three totally without merit claims or applications to be made before an extended CRO can be made (in other words, more than just the two such applications required for a limited CRO). Even where there are three or more, it remains necessary to consider whether the party concerned is acting persistently. This can involve an evaluation of the party's overall conduct but, in a case where the party in question seeks repeatedly to relitigate issues which have been decided, persistence is likely to be established.

26. Further, important considerations for the court when deciding whether to impose a CRO were set out in *Ludlam (a Bankrupt)* [2009] EWHC 2067 (Ch) at paragraphs 12-14 as follows:

> "12. Assuming that the pre-conditions for the making of a CRO are satisfied, it does not necessarily follow that a CRO should be made. The court has a discretion. It is clear that this discretion must be exercised in a proportionate manner. Whilst the party subject to a CRO is not absolutely prevented from approaching the court, nevertheless that party (unlike any other litigant) has to pass through a filter of obtaining permission from the specified judge. Therefore, the court should carefully consider in a graduated way whether a limited CRO would suffice before making (assuming the pre-conditions allow it) an extended CRO.
>
> 13. To my mind, the most important factor in the exercise of the discretion is the "threat level" of continued issue of wholly unmeritorious claims or applications. No litigant has the substantive right to trouble the court with litigation which represents an abuse of the court's process (see, for example, *Bhamjee* at para 33(iii)). The mischief of such unmeritorious litigation is not merely the unnecessary troubling of the opponents (frequently in circumstances where the opponents cannot enforce costs orders against the party bringing the unmeritorious litigation). Over and above this, such unmeritorious litigation drains the resources of the court itself, which of necessity are not infinite. Hence, limited resources which should be devoted to those who have genuine grievances are squandered on those who do not ... It is no defence for the party bringing the unmeritorious litigation to say that he genuinely, and honestly, believed that he had a viable grievance. As the Court of Appeal said in *Bhamjee* (para 4), in many, if not most, cases the litigant in question has been seriously hurt by something which has happened in the past. The litigant feels that he was unfairly treated and cannot understand it when the courts are unwilling to give him the redress he seeks. To my mind, the only relevance of an honest belief in the

> validity of the unmeritorious claims which are being brought is that it may go to increase the "threat level" of future unmeritorious litigation. The question to be asked, quite simply, is will the litigant, now, continue with an irrational refusal to take "no" for an answer ...
>
> 14. Accordingly, it seems to me to be clear that the making of a CRO is in no way punishment for past conduct. But that past conduct is highly relevant in ascertaining what is the "threat level" of the continuation of future unmeritorious litigation. …"

Application to this case

27. Applying these principles to this case, I am satisfied that Mr Shamlou has persistently issued applications in these proceedings that are totally without merit. First, I have made three determinations that Mr Shamlou's applications are totally without merit. Beatson LJ has also made such a determination and, albeit not expressed in these terms, so has Haddon-Cave LJ. The threshold requirement for at least three such applications is therefore met.

28. Secondly, on any sensible evaluation of Mr Shamlou's overall conduct, he has acted persistently in this regard. This is because all of his applications have turned on the same argument and were made with the same objective. Mr Shamlou's arguments have now been considered on seven occasions. None of his applications has been prompted by any relevant change in circumstances which might arguably have justified trying to rerun the same argument. Reasons, often full reasons, have been provided by most of the courts on the occasion of these applications. Notwithstanding the fact that the primary ground for refusing permission given by Pill LJ was that there was no good reason to extend time and that judicial review was in any event the wrong avenue for this complaint, Mr Shamlou has repeatedly failed to engage with either point and instead advanced arguments relating to the substantive merits of the underlying litigation and to an alleged judicial conspiracy that he has relied upon since the outset. His allegations of fraud and bias all concern complaints about the outcome of the underlying litigation in Blackpool County Court. At no stage has he ever advanced any arguable basis for thinking or concluding that Pill LJ's judgment was itself affected by fraud or bias or that this is the position in relation to any other Court of Appeal judge who has had dealings with this case.

29. As I explained in my last order, while a mistake in the judgment of Pill LJ may have been correctly identified by Mr Shamlou, it is plainly and unarguably immaterial. The underlying claim was for damages for wrongful distress and not for an injunction, as Pill LJ incorrectly stated. However, that minor error apart, it was clear to me then and remains clear to me now that there was no arguable error made by Pill LJ in relation to the dates and the judges in question and Pill LJ correctly referred to the cause of action as one for distress. I was and remain in no doubt that Pill LJ had the correct papers in front of him and that the error was limited to the nature of the relief sought, as he described it. This was, as I have said, irrelevant to the points in issue on the application for permission to appeal and does not begin to call into question the judgment made by Pill LJ in refusing permission to appeal.

30. It is clear to me that Mr Shamlou feels a grave sense of grievance about the sequence of events described. I have no doubt that he, and Gillian Ridley, felt seriously aggrieved by the loss of her business tenancy. Mr Shamlou has, over the course of the last decade or so, carefully prepared voluminous bundles that set out the history and make all points in writing which he has chosen to make. He has made clear today that his mental health condition has caused him a degree of difficulty in collecting his thoughts and advancing his arguments. Nonetheless, with dignity and clarity, he has explained the history of harassment, as he has perceived it, from the police that led to delays, together with his mental health condition and the drug regime he has been on since 2001. He has been able to make submissions, as already indicated, that this was a proper case for judicial review and maintains that there were good reasons to extend time for the application for permission to apply for judicial review.

31. Whilst I have every sympathy for Mr Shamlou's personal position, the inference I draw from the submissions he has made this morning is that he continues to feel unfairly treated and continues not to understand why the courts have been unwilling to give him the redress he seeks. He has made clear in seeking a last opportunity to make a yet further application putting forward evidence to justify the extension of time arguments, that even now Mr Shamlou refuses, and will continue to refuse, to take no for an answer in relation to these proceedings, which should have been regarded as finally determined a very long time ago. In other words, the threat level of future unmeritorious litigation remains high, in my judgment. Nothing in the submissions made by Mr Shamlou has persuaded me that this is not so.

32. In addition, there is nothing in the written material I have been provided with or in the submissions Mr Shamlou has made that provides any arguable basis or factual foundation to reopen the refusal of permission to appeal. The very high threshold for reopening a final determination of an appeal has not come close to being met, as Mr Shamlou has been told repeatedly in the reasons for the orders already made.

33. As I explained to Mr Shamlou in the course of the hearing, and I repeat now, on each occasion on which he makes a fresh application to reopen, numerous documents and carefully-prepared written submissions are put forward by him for reconsideration by the court. The files from earlier applications are also produced. Thus, the court's limited resources in terms of time, both staffing and judicial resource, which should be devoted to those whose claims and applications have not reached a final determination and who have a genuine grievance that merits the attention of the court, are spent on dealing with Mr Shamlou's applications that have long ago been determined as having no merit whatsoever. That is inconsistent with the over-riding objective. To be blunt, it is a waste of scarce resources. I say that not to offend or upset Mr Shamlou but in the hope that he will now understand the position that has been reached and desist in his irrational refusal to take no for an answer.

34. Accordingly, for all these reasons, and in the absence of any proper basis for concluding that I should not make such an order, I have reached the conclusion that making a CRO in this case is a proportionate and appropriate step to take. As I have said, Mr Shamlou has made clear today that he remains undeterred by the orders I have

made and intent on continuing to trouble the courts with further applications. The litigation pursued by him represents an abuse of the court's process and is an unfair and disproportionate drain on limited resources. I am also satisfied that it would be appropriate to impose an extended CRO rather than a limited one because I regard it as necessary to restrain Mr Shamlou from issuing applications or new claims which concern any matter involving or relating to or touching upon or leading to the underlying proceedings. Accordingly, I shall make such an order, and I will explain the terms and effect of the order I propose to make, using ordinary, clear language, to ensure that Mr Shamlou understands what will happen next and its effect.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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