



[2019] EWHC 3646 (Ch)

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

BL-2017-000116

BL-2017-000411

HC-2016-000117

CH-2015-0495

HC-2016-001558

The Rolls Building
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Fetter Lane
Holborn
London, EC4A 1NL

Tuesday, 3 December 2019

Before:

MR JUSTICE BIRSS

BETWEEN

Mr Shahrooz Ghassemian

Claimant

and

Chatsworth Court Freehold Company Ltd
C.A. Daw & Son Ltd

Defendants

AND BETWEEN

Mrs Hamila Sartipy

Claimant

and

Chatsworth Court Freehold Company Ltd
C.A. Daw & Son Ltd

Defendants

AND BETWEEN

Mrs Hamila Sartipy

Claimant

and

Tigris Industries Inc.

Defendant

AND BETWEEN

Mr Shahrooz Ghassemian

Claimant

and
Mathieu Henry Andre du Boscq de Beaumont
Anthina Essig

Defendants

Mr Ghassemian appeared in person by videolink

Mrs Sartipy did not appear.

Mr Stuart Armstrong instructed by Wedlake Bell appeared on behalf of Chatsworth Court Freehold Company Ltd, C.A. Daw & Son Ltd and Tigris Industries Inc.

Mathieu Henry Andre du Boscq de Beaumont and Anthina Essig did not appear

J U D G M E N T

MR JUSTICE BIRSS:

- 1 This is a hearing to determine what to do about two extended civil restraint orders, one of which relates to Mr Shahrooz Ghassemian, and the other relates to his mother Mrs Hamila Sartipy. The matter has a very long history, summarised in various previous judgments. When I gave this ex tempore judgment I explained that I would not attempt to summarise the background at that stage but would include a summary if I was asked to approve the transcript. The following is that summary.
- 2 Very briefly, it all relates to a property at 56 Chatsworth Court, Pembroke Road, London W8. At one time Mrs Sartipy held a lease on that property. There were originally two sets of legal proceedings.
- 3 In about 2008 a claim was brought against Tigris Industries Inc. in the Land Registry. It related to a different property. The claim was either brought by Mrs Sartipy, alone and represented by Mr Ghassemian or by both Mrs Sartipy and Mr Ghassemian together. The claim failed and in 2011 a final charging order to secure the costs was made in favour of Tigris over 56 Chatsworth Court.
- 4 Meanwhile in a separate case, a claim was brought in the county court against Mrs Sartipy for unpaid services charges related to 56 Chatsworth Court. The claimants were Chatsworth Court Freehold Company Ltd and CA Daw & Son Ltd. That claim had come to an end in 2011. Mrs Sartipy was ordered to pay the unpaid service charges and costs. Another final charging order was made over 56 Chatsworth Court to secure these sums, this time in favour of Chatsworth Court Freehold Company Ltd and CA Daw & Son Ltd.
- 5 Since then, in every year since 2011, a bewildering range of unsuccessful applications, appeals and fresh proceedings have been brought to try and prevent enforcement. In recent

years a number of documents have appeared which purport to be orders of the court but which seem to be forgeries, produced by Mr Ghassemian.

- 6 An order for possession and sale of the property was made in the Chatsworth and Daw proceedings in the county court in 2015. In August 2015 in the county court an Extended Civil Restraint Order was made against Mr Ghassemian in the Chatsworth and Daw case relating to applications in any county court regarding 56 Chatsworth Court.
- 7 In January 2016 Mr Ghassemian issued proceedings in the High Court seeking to set aside the order for sale (HC-2016-000117). The ECRO in the county court did not prevent High Court proceedings. The claim form was struck out.
- 8 In March 2016 Henry Carr J dismissed an application by Mr Ghassemian for permission to appeal the order for sale of 56 Chatsworth Court as totally without merit and made an ECRO against Mr Ghassemian relating to applications regarding 56 Chatsworth Court in the High Court or in County Court. That ECRO is made in the Chatsworth and Daw case. However it applies to any application by Mr Ghassemian concerning the property, irrespective of which proceedings that is in or who the other parties are.
- 9 In May 2016 two more claims forms were issued in the High Court, one against Tigris and the other against the claimants in the Chatsworth case. They were issued in Mrs Sartipy's name.
- 10 In March 2017 56 Chatsworth Court was sold and the proceeds paid into court. An order dealing with the proceedings of sale, in which both Tigris and the parties in the Chatsworth and Daw case are named, was made. The purchaser of 56 Chatsworth Court was Mathieu Henry Andre du Boscq de Beaumont. Another person, Anthina Essig, seems also to have been involved and may be a tenant of Mr de Beaumont.

- 11 In July 2017 order for default judgment in the 2016 Tigris claim in Mrs Sartipy's name was obtained. The default judgment order set aside various previous orders including earlier charging orders.
- 12 On 20th October 2017 Henry Carr J dealt with the 2016 High Court claim brought against the claimants in the Chatsworth and Daw case (judgment [2017] EWHC 3062 (Ch)). He struck it out. At the same time Henry Carr J extended the 2016 ECRO to expire on 19 October 2019.
- 13 In November 2017 Tigris lodged an application to set aside the default judgment order, asked for the 2016 claim against them to be struck out and sought an ECRO against Mrs Sartipy. On 18th December 2017 Henry Carr J decided that Tigris had not been served with the claim form even though Mr Ghassemian knew that Tigris were represented by solicitors and that Mr Ghassemian had misled the judge who made the default judgment order. The judgment is [2017] EWHC 3596 (Ch). The default judgment was set aside and the claim struck out. Henry Carr J also made an ECRO against Mrs Sartipy on the basis that Mr Ghassemian had been using his mother's name to avoid the effect of the earlier 2016 ECRO. That ECRO against Mrs Sartipy expires on 18th December 2019. The order is made in the Tigris proceedings, however like the ECRO made against Mr Ghassemian in the Chatsworth and Daw proceedings, it applies to applications relating to the property generally, irrespective of who the other party is.
- 14 A great deal more than is set out above has happened between 2011 and today but there is no need to include any more. One feature is that by now, given the number of different cases and applications, it has become difficult to accurately identify the appropriate action numbers and the proper parties.
- 15 The issue the court has to decide is whether to extend the two civil restraint orders, the ECRO against Mr Ghassemian and the ECRO against Mrs Sartipy.

- 16 For the order relating to Mr Ghassemian, the matter arises because acting on the court's own motion, I made an order in July 2019 that the issue of whether to extend that ECRO should be determined at a hearing. At that stage the judge primarily supervising Mr Ghassemian's ECRO was Henry Carr J but sadly he died at around that time. The purpose of the order was to bring matters to a head. The ECRO relating to Mr Ghassemian expired in October 2019. Unfortunately it did not prove to be practical to have the hearing listed before that expiry.
- 17 For the ECRO relating to Mrs Sartipy, the firm of solicitors now acting for all three of Tigris Industries Inc, Chatsworth CFC and CA Daw & Son Ltd, that is Wedlake Bell, issued an application on 11th November 2019 seeking to extend her ECRO. This is supported by a witness statement of Susan Fritsche. Ms Fritsche's witness statement deals with recent events and that, together with a two volume bundle of orders, judgments and previous witness statements allows one to see what has been going on. I will call the parties represented by Wedlake Bell, the Tigris and Chatsworth parties.
- 18 The ECRO against Mrs Sartipy is still in force today, today being 3rd December.
- 19 The Tigris and Chatsworth parties are represented before me by Mr Stuart Armstrong. On behalf of his clients, counsel submits that both ECROs should be extended. Mr Boscq de Beaumont and Ms Essig have not been served and are not represented. Nothing turns on that.
- 20 Mr Ghassemian appeared at this hearing by video link. Mrs Sartipy did not appear. The reason for the video link was said to be because Mrs Sartipy and Mr Ghassemian are in Iran. The Tigris and Chatsworth parties believe that is untrue and Mr Ghassemian at least is still living in London. I dealt with that issue at the hearing.

- 21 Mr Ghassemian raised a question of law in relation to the civil restraint order against him. He pointed out that it has now expired, and submits that the correct approach is that the court could only make a fresh CRO, which would require three further "totally without merit" orders. Moreover he argues that the CRO cannot be extended using the power in CPR Practice Direction 3C, paragraph 3.10 because the wording of that paragraph; which provides that the court may extend the duration of an extended civil restraint order if it considers it appropriate to do so, but it must not be extended for a period greater than 2 years on any given occasion; is not wide enough to allow for an order for extension to be made after it has expired.
- 22 Mr Armstrong submits that that is not the right approach, and that the rules do not preclude the court, as a matter of jurisdiction, from granting an extension of a CRO, even after the date has passed.
- 23 I accept that submission. In my judgment there is no fetter on the jurisdiction of the court to grant an extension of a civil restraint order even if that order is made after the CRO has expired, but no doubt if that is what the court is being asked to do, that fact would be a highly material factor to be taken into account in deciding whether to make the order.
- 24 I also accept Mr Armstrong's other submission that if the court did decide to extend a civil restraint order, the limit of two years referred to in paragraph 3.10 must run from the expiry of the existing civil restraint order, otherwise that will be a way of getting round paragraph 3.10.
- 25 The rule itself (para 3.10) provides that the test for the court when considering whether to extend a civil restraint order is simply "whether it would be appropriate to do so". That was

considered by Lewis J in *Society of Lloyd's v Noel* [2015] EWHC 734 (QB), and in particular paragraphs 43 and 44. For the purposes of today, I summarise the principles as follows:

- i There must not be a simple presumption of continuance. Orders should not be extended automatically.
- ii The relevant factors will be or include:
 - a the background,
 - b the degree of persistence prior to making the original order,
 - c the conduct of the person after the order was made.

26 Turning to the facts of this case, there is clear evidence that since the extended civil restraint order was made against Mr Ghassemian, he has still tried to relitigate essentially the same dispute, which fundamentally relates to the ownership of the property, 56 Chatsworth Court, with which all these legal proceedings are concerned. I will refer only to one example of this, although there are others.

27 In July 2018 Mr Ghassemian, either on his own behalf or on behalf of his mother, was urging the Court of Appeal to make various orders in two separate appeals, one relating to him, and one relating to his mother. One of the problems of dealing with Mr Ghassemian is he appears usually either representing himself, or purporting to represent his mother, and it is often very difficult to pin down exactly which case one is dealing with.

28 But there are two Court of Appeal cases, with distinct references, one ending 0011, and the other ending 3031. The 0011 proceedings relate to Mrs Sartipy, and the defendant is Tigris. The 3031 proceedings relate to Mr Ghassemian, and the respondents are Chatsworth and Daw. Newey LJ made various orders. Newey LJ granted permission to appeal for Mrs Sartipy on a point of law relating to the 2017 ECRO against her and he also rejected various

applications made by Mr Ghassemian in his appeal, 3031. The appeal by Mrs Sartipy appeal ultimately failed: see the judgment of the Court of Appeal given earlier this year ([2019] EWCA Civ 225, Bean and Males LJJ).

- 29 What then appears to have happened is that a document emerged which is a copy of an application notice referring to the claimant/appellant as Mr Ghassemian, and the defendants as Mathieu De Beaumont, Athina Essig and persons unknown. The application notice is dated 10th July 2018. It seeks an injunction to restrain the persons who by then were entitled to 56 Chatsworth Court from interfering with what is said to be Mr Ghassemian's right to possession of the property. The copy which has appeared bears a Court of Appeal stamp of 20 July 2018 which may indicate when it was issued in the Court of Appeal. However written in manuscript at the top of the document are the words "remit to Wandsworth CC, 25.7.18", and a squiggle, which it looks like an initial of some kind. However the Court of Appeal office have confirmed that no such order remitting that application to the county court was ever made.
- 30 This document was deployed by Mr Ghassemian in Wandsworth County Court. In proceedings there Mr Ghassemian obtained orders evicting Mr Beaumont from the property, although Mr Beaumont has now been reinstated. The document itself was being used to give Mr Ghassemian this further opportunity to relitigate the issues relating to ownership of 56 Chatsworth Court. I refer to only one example. It is an order made by HHJ Helman in Central London County Court, on 21 December 2018. It includes a reference to an application for an injunction filed by the claimant Sharhooz Ghassemian in the Court of Appeal on 20 July 2018 and, as it was put in HHJ Hellman's order, "Remitted to the County Court at Wandsworth" on 25 July 2018.

- 31 I infer that this is another example of Mr Ghassemian's conduct, which I can only characterise as devious and dishonest. The inference to draw from this material, and I bear in mind that this is a civil court and I am drawing these inferences on the civil standard, is that Mr Ghassemian himself must have written "remit to Wandsworth CC" on this Court of Appeal document, and then used it for his own ends in pursuing proceedings in the county court.
- 32 Since this took place well after the civil restraint order was made against Mr Ghassemian, this example alone, never mind the other material in the witness statement of Ms Fritsche, is strong evidence of the appropriateness of extending the civil restraint order.
- 33 Just to be clear, the point is not that Mr Ghassemian has again lied or forged documents or anything of that kind, although that is a relevant factor. The point is that in doing so, Mr Ghassemian had demonstrated that he wishes to try to litigate in the courts the very same issues that the civil restraint order is designed to restrain him from doing, without permission from a supervising judge. When the first CRO was made in the county court, Mr Ghassemian went to the High Court; when the second CRO was made in the High Court, Mr Ghassemian used his mother's name; when the third CRO was made naming his mother, Mr Ghassemian then used proceedings purported to have started in the Court of Appeal, which were not on the face of it prevented by the two extant CROs.
- 34 As Mr Ghassemian knows perfectly well, an extended civil restraint order does not prevent him from bringing well-founded matters to the court. What it does is puts a fetter on his ability to make ill-founded applications to the court, by requiring him to get permission from a relevant judge.

35 Another point that was taken was whether the company Chatsworth CFC Ltd , and for that matter Daw and Tigris, had a sufficient standing for the order to be made. I am quite satisfied that they do. I think Mr Ghassemian put it that they were not even parties to the relevant proceedings I think because the property has now been sold on. Apart from any other factors, Chatsworth CFC Ltd is the owner of the freehold, although, I am told on instructions from Mr Armstrong, there is a head lease company interposed between Chatsworth and the lessee in possession, which currently as I understand it is Mr Beaumont, and used to be Mr Ghassemian or his mother or both of them. However it is clear that even today all these companies (and Mr Beaumont) are affected by Mr Ghassemian's behaviour not least by being drawn into his attempts to relitigate the issues.

36 So, I am satisfied that the the civil restraint order against Mr Ghassemian should be extended for a period running for a further two years from the date when it expired. I have well in mind the fact that this would extend an order which has already expired. If there was any evidence that any activity which took place between the date when it expired and today needed to be dealt with differently, then a special order might be considered dealing with that period but Mr Ghassemian has told me that he has not done anything in that period. He says that was because he did not need to, and that may be, but on that basis there is no reason to make any order relating to the period before today, and after the expiry in October 2019.

37 Turning to the position of Mrs Sartipy, Mr Ghassemian has pointed out that there is very little evidence that Mrs Sartipy has done anything in the period since the extended civil restraint order was made. I think that is right. However, what the evidence does show is that Mr Ghassemian has continued to use the difference between himself and his mother in legal proceedings as a device for achieving what he is trying to do, which is to start or bring

proceedings in the court, make applications, obtain orders, and generally cause a great deal degree of trouble for the court and for the other parties.

- 38 I have considered whether that is sufficient to justify extending the civil restraint order against Mrs Sartipy, or whether it is properly to be characterised as a "mere apprehension", which the earlier cases characterised as not a good enough reason to continue the extended civil restraint order. Essentially, Mr Ghassemian's point, on behalf of his mother, is to remind me that one should not automatically extend civil restraint orders.
- 39 The pattern of Mr Ghassemian's behaviour justifies a conclusion that it would be appropriate to extend the civil restraint order relating to Mrs Sartipy. The evidence relating to it is weaker, but that is because everything is really driven by Mr Ghassemian and, in the end, since the extended civil restraint orders were made, Mr Ghassemian has continued to use his mother's name as a vehicle for causing confusion. For that reason, I will extend the civil restraint order relating to Mrs Sartipy. There is no evidence before me that the extended civil restraint order has caused any specific difficulty for Mrs Sartipy.
- 40 For those reasons I will make the extended orders. The judges to be named on the extended civil restraint orders are a matter I will need to discuss with the court office before the orders are drawn up, but the extensions will both be granted over to the same date, i.e. two years from the expiry of the extended civil restraint order against Mr Ghassemian. I will also vary the terms of the CROs in various ways to identify further relevant action numbers and name all the various parties who might be effected by Mr Ghassemian's activities, and I will arrange for the CROs to be reissued in the amended form.
- 41 That is my decision. It is necessarily compressed in the circumstances, but the parties I think can understand the reasons why I have made the order.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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