

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION

Case No: E00BQ214 and EN19/2021

NCN: 2023 EWHC 746 (KB)

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday, 16th February 2023

Before:

MASTER DAGNALL

B E T W E E N:

(1) MRS MARY BEVANS
(2) MR VINCENT O'CONNOR

And

MR PAUL BUCKENHAM

And

(1) SHCE LIMITED
(2) DAVID ASKER

MS E QUINN of Counsel appeared on behalf of Mr O'Connor
MS WADWHANI of Counsel appeared on behalf of the SHCE Limited and David Asker

APPROVED JUDGMENT

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MASTER DAGNALL:

1. I have before me an application from Mr O'Connor, the second claimant (and whom I will call "the claimant"), by application notice dated 28 November 2022, to set aside or vary an order, which I made on 16 July 2021, granting the respondents to this application, SHCE Ltd and David Asker, permission to use reasonable force to enter the second claimant's premises to seize various goods under a writ of control, which had been obtained from the Cheltenham and Gloucester District Registry in relation to judgments granted by District Judge Humphreys on 5 January 2020 in the County Court sitting at Southend.
2. The order of District Judge Humphreys of 5 January 2020 is before me and includes injunctions being granted against the claimants, dismissal of various applications made by the claimants as being totally without merit and a civil restraint order being made under Civil Procedure Rule ("CPR") 3.11 and paragraph two of Practice Direction 3C. It provides that the claimants may not make any further applications in "these proceedings" without first obtaining the permission to make such application from District Judge Humphreys, and also that they may not apply for amendment or discharge of the order of 5 January 2020 unless they first obtain the permission to make such application from District Judge Humphreys, but with an exception for any appeal against the order itself, and no such appeal has been brought. It also provides that the defendants should be given notice of any such applications.
3. The order of 5 January 2020 also provided for various substantial judgments, including in excess of £50,000 of costs to be paid by the claimants to the defendants and it is those, together possibly with other judgments, which are said to be the subject matter of the Writ of Control. I have not seen the writ of control, and it was not issued out of the local District Registry in Southend, but out of the Cheltenham and Gloucester District Registry. That is something which is permissible under the relevant process, unlike the position under CPR30.4(3) in relation to writs of possession, but which often tends to cause difficulty since it has the result that there is a complete absence of localisation.
4. The respondents' case is that they served a notice of enforcement in relation to the Writ of Control, under the Taking Control of Goods Regulations 2013 ("the 2013 Regulations") and schedule 12 of the Tribunal Courts Enforcement Act 2007 ("Schedule 12"), in February 2021; and there is email evidence before me showing that the claimant sent an email acknowledging receipt of that notice of enforcement.
5. The claimant then applied for a stay of the writ of control by some form of email application to this Court, which was considered by Master Brown on the papers. Master Brown granted a stay of execution on a set of conditions, including that the claimant should make a request to District Judge Humphreys under the civil restraint order for permission to make an application to set aside the underlying financial judgments. On my initial reading of paragraph one of the order of Master Brown, although I do not formally decide this today, the stay would come to an end if (1) no request for permission to District Judge Humphreys was made within seven days, or (2) the request for permission was refused, or (3) if a request was made in time and was not refused, then if an application was not made to set aside the judgment. If permission was sought within the seven days and granted, and an application was made to set aside the financial judgments, the stay would only continue until seven days after the application was determined.
6. The respondents say in their evidence that they enquired of the County Court at Southend as to whether or not a request for permission had been made and received an email on 30 March 2021, which I have not seen, which stated that any applications had been "returned", that email either being dated 30 March 2021 or shortly before then. There appears to be

something of a dispute between the parties as to whether or not a copy of that email from the Court was ever provided to the claimants.

7. There are differing inferences which might be drawn from this, being mainly that either (1) the claimant had not within the seven days made a request under the civil restraint order for permission to make an application to set aside the financial judgments, and, possibly that what they had done instead was only to have made an actual application to set aside the financial judgments and which at first sight is not what was provided for by Master Brown's order, or alternatively (2) the County Court had rightly, or possibly wrongly, returned some document which had been submitted to the County Court and which had been intended to be a request under the civil restraint order for permission to make an application to set aside the financial judgments, and which at first sight would have been what was provided for by Master Brown's order.
8. In any event, at a point in time after Master Brown's order, the respondent enforcement officers attended at the claimant's premises and entered but then withdrew when they presented with a copy of Master Brown's order, of which they say that they did not until then have notice. The respondents then stated to the claimant that the stay granted by Master Brown had lapsed.
9. The respondents then applied to me (under paragraphs 20 and 21 of Schedule 12 and paragraph 28 of the 2013 Regulations) for an order that they should be permitted to use reasonable force to enter the claimant's premises. They made the application without notice to the claimant stating that (i) they had good reason for seeking an order enabling them to use force to enter the claimants' premises (ii) the stay granted by Master Brown's order had lapsed as they had been told by the County Court that no application had been made to District Judge Humphreys for permission or otherwise in accordance with Master Brown's order and (iii) if they had to give notice to the claimant, either of the application or of any resultant order, then they feared that any goods over which they sought to enforce would be removed and disappear. They therefore sought for me to have the order made without notice.
10. I granted the order on 16 July 2021 and it included the usual provision that any party served with the order, which would include the claimant, would have a period of 14 days, that being double the normal seven days and which I regarded as appropriate in the circumstances, to apply to set aside or vary my order.
11. On reflection, I do wonder whether it might have been appropriate to have required some sort of undertaking in damages from the respondents in case I did eventually set aside or vary my order, but I did not and the consequences, if any, which would flow from my setting aside my order (should I decide ever to do so) may or may not be a matter for another occasion.
12. My order was made on 16 July 2021 and provided for it to be served with not only the supporting evidence, but also a note of the judgment which I delivered when hearing the respondents' application and making the order. I had originally intended the respondents to compose the Note without reference to me, but they subsequently submitted their Note to me for approval and I approved it with appropriate revisions.
13. What the respondents then did was: first, they effectively executed the order, by going into the claimant's premises and securing relevant goods; and, second, only then provided the claimant with a sealed copy of the order and then some days later provided the claimant with the supporting evidence, which had been relied on before me, and the approved Note of my judgment.
14. The claimant did not at that stage seek to apply to set aside or vary my order. The claimant says that he was continuing to pursue an application to District Judge Humphreys and was

seeking information from the respondents with regards to his being provided with copies of the writ of control and of any communications from the Court. However, the claimant does not seem, at least on the evidence before me, to have asked or to have seriously pursued either the Southend County Court, which would be the relevant court to deal with the question of what applications had been made to it, or the Cheltenham and Gloucester District Registry, who issued the writ of control, for copies of such documents.

15. The claimant did not then make any application to set aside or vary my Order of 16 July 2021. It might well be said that it was clear to the claimant at this point as to what this Court had been told when I made my order of 16 July 2021, and that if the claimant wished to dispute that Order they could then have made an application to have the Order set aside or varied, and which they did not. However, that is only a contention which the respondents may make in due course, and I do not come to any conclusion as to it today.
16. In any event, the matter proceeded in the County Court sitting at Southend where some formal set of applications and requests were made by the claimant to District Judge Humphreys who dismissed them in November 2021.
17. Again, the claimant did not thereafter seek to set aside or vary my original order. Then either the claimant, or possibly the respondents, did, however, seek to have Master Brown then clarify the position as to whether or not the stay which Master Brown had granted still continued. It seems to me, at first sight, that it was relatively obvious that it did not; because it was a term of Master Brown's stay order that the stay would only continue, at most, until seven days after the application to District Judge Humphreys (if made) was determined and any such application had been determined against the claimants in November 2021. However, Master Brown made an order in May 2022 making it clear the stay had come to an end although the order does not provide, and I have no note of the relevant judgment, for at what point in time, and why, the stay terminated.
18. Notwithstanding that May 2022 order, it still took another six months for the claimant to apply to make this application, which is before me.
19. In these circumstances, the respondents have very recently, after I had directed this hearing to take place in order to enable me to understand the claimant's application and its basis and deal with its case management, asserted that the claimant's application cannot proceed in any event because the civil restraint order requires the permission of District Judge Humphreys to be first obtained.
20. Ms Quinn, counsel for the claimant, says that is not the case. She submits that the civil restraint order was an order made in the County Court and does not apply to the proceedings in the High Court. She draws attention to the fact that, in relation to extended civil restraint orders and general restraint orders, under paragraphs three and paragraph four of Practice Direction 3C, it is provided that they need to identify the courts to which they relate.
21. It seems to me that, having considered the parties' submissions, and although to an extent my decision is provisional for reasons which I will give, that the limited civil restraint order does cover this particular situation which is before me, and requires the claimant to first obtain the permission of District Judge Humphreys before making or pursuing the application to set aside my order of 16 July 2021.
22. What is restrained by the civil restraint order is the making of any further applications in the proceedings in which the order is made. In one sense it can be said that obtaining a writ of control is something which is distinct from the underlying County Court proceedings, but it seems to me nonetheless that it is still an enforcement of an order made by the County Court, which is governed by and is within the original proceedings themselves.
23. Indeed, for the writ of control to be obtained, it was necessary for the proceedings, or at least the underlying orders, to be transferred to the High Court for the purpose of

enforcement. That is, and here was done, by a certificate of judgment being obtained under Civil Procedure Rule 40.14A and which operates as a deemed transfer of the proceedings under Civil Procedure Rule 83.19 – see CPR83.19(2) “The grant of a certificate by the court will take effect as an order to transfer the proceedings to the High Court and the transfer will have effect on the grant of that certificate.” Even if the transfer was limited to the relevant judgments being transferred for the purposes of their enforcement (which may be the effect of section 42(5) and (6) of the County Court Act 1984 and CPR83.19, although I do not decide this today), it is still a transfer of “the proceedings”.

24. It seems to me that these are effectively still the same “proceedings” which were in the County Court. While the wording of the rule for extended and general civil restraint orders requires relevant courts to be identified, that is because those orders are not made generally in the context of a single set of proceedings. While that may be the case, those orders are very often made in circumstances where someone has brought multiple proceedings without merit, and so that it is appropriate for the relevant person to be restrained across one or more courts. However, a limited civil restraint order can only be made in relation to the “proceedings” in which that order was made – see paragraphs 2.2 and 2.3 of Practice Direction 3C.
25. Since the limited civil restraint order which District Judge Humphreys made was in, and had to be in, relation to the specific set of proceedings, namely the proceedings E00BQ214, which (and the relevant judgments which have been sought to be enforced) were then in the County Court at Southend, there is no reason for the rules to require identification of the particular court which are affected by the civil restraint order, nor for the order to do so; it simply applies to those proceedings. The fact that those proceedings (at least for the purposes of the enforcement of the relevant judgments) have subsequently been transferred to the High Court makes no difference, they are still the same “proceedings” – being E00BQ214 (and the mere fact that the High Court gave them the number “EN19/21” was simply for the High Court’s convenience when the claimant made his original stay application to Master Brown, and there was no creation of new and different “proceedings”).
26. It therefore seems to me, provisionally at first sight, that the limited civil restraint order does cover this application, it being made in the those proceedings (i.e. E00BQ214 or at least in relation to the enforcement of a judgment granted in those proceedings and which is thus part of those proceedings), and therefore that permission is required from District Judge Humphreys to make it.
27. I have borne in mind that Master Brown was prepared to grant a stay, having considered the civil restraint order and without such a permission having first been obtained, but it seems to me that Master Brown was doing so in a rather peculiar situation; that being where the proceedings were no longer in the County Court at Southend, a writ of control having been obtained from the Cheltenham and Gloucester District Registry, and Master Brown was having to deal with an urgent application which was being made in London. While, it seems to me more probable that the application should have been made in Cheltenham and Gloucester District Registry, and that technically the permission of District Judge Humphreys probably should have been sought and obtained before the application for a stay was made at all, the situation was a confused and difficult one for the claimant and the Master, and I can see why Master Brown made the order that he did. Nonetheless, I am having to consider the full question as to whether or not the terms of the limited civil restraint order apply here, and in the circumstances of my analysis of the CPR and of District Judge Humphreys’ civil restraint order, it seems to me that it does.
28. However, I am concerned that I am here construing District Judge Humphreys’ own order

in coming to a conclusion that I should require a successful application to be made to District Judge Humphreys for the grant of permission under the limited civil restraint order before I can consider the claimant's application to me further. It seems to me that it would be potentially inappropriate and unfortunate for me to force upon District Judge Humphreys my construction of the limited civil restraint order, and in consequence the need for District Judge Humphreys to deal with the application for permission, if District Judge Humphreys, who is best placed to know the underlying intention and to provide any correction or clarification (e.g. under CPR40.12 or paragraph 4 of the Practice Direction to Part 40 or the court's inherent jurisdiction) as to the limited civil restraint order and its ambit and extent, takes a different view. In the circumstances, I am only going to determine that the limited civil restraint order extends to the application before me provisionally and will make only an interim declaration accordingly (see CPR25.1(1)(b)).

29. That, it seems to me, effectively means that I cannot deal with this matter further, except perhaps to make directions to help achieve the overriding objective.
30. I have considered whether I should transfer the County Court claim to this court under section 41 of the County Courts Act and then make orders varying District Judge Humphreys' orders so I could deal with the civil restraint order aspect. It seems to me though that that is inappropriate here, firstly because I do not have time today to consider it properly. Secondly, because District Judge Humphreys has a much greater knowledge of this matter than I have; and, thirdly, because District Judge Humphreys will have the County Court file, which I do not have and to which I do not have access.
31. It seems to me that the appropriate order to make, in circumstances where it seems to me that the order of District Judge Humphreys applies here, but that the District Judge is the best person to consider that and any application for permission under the limited civil restraint order, is to stay this application on condition that the second claimant requests permission under the civil restraint order from District Judge Humphreys within a set period of time and with this application to be automatically dismissed, but with permission to apply with regards to costs, if (a) the request for permission is not made within the set period of time, or (b) the request is refused; and what I will do is provisionally declare (i.e. grant an interim declaration) that the application is within what is prohibited by the civil restraint order.
32. However, that is provisional and interim. The declaration will stand unless District Judge Humphreys otherwise directs; it seeming to me that it is that Judge who is best placed to deal with all the civil restraint order aspects. Thus if the claimant still wishes to contend that the civil restraint order does not apply in this particular situation, the claimant can still seek to persuade District Judge Humphreys of that.
33. In those circumstances, it does not seem to me to be right to deal with the other elements of the claimant's application substantively. It does seem to me that that application faces a number of difficulties, being in particular: firstly, as to whether or not the enforcement agents could simply rely on my order; and secondly, the claimant had 14 days to apply to set aside or vary my order, and where I find it distinctly difficult to understand what is the claimant's excuse for not applying, firstly within the first 14 days, secondly, well before District Judge Humphreys' decision in November 2021, thirdly, within a reasonable period of time thereafter, and fourthly, within a reasonable period of time of Master Brown's order.
34. However, while I cannot at first sight see what their justification is for have so waited, it may be that they will be able to expand on what has been said so far. In any event, in view of the civil restraint order, it does not seem to me that I ought to be coming to any final decisions at all. However, it does seem to me though, that what should happen in order to assist matters before District Judge Humphreys is that the respondents should produce a

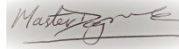
copy of the writ of control, which presumably they have, and also the communication from the Court, which was referred to in paragraph 20 of the witness statement in support of the application which was made to me by the respondents resulting in my order of 16 July 2021.

35. Those documents the defendant should have and it seems to me that it would be useful for them to be produced in order to make matters all the more clear to everyone, including District Judge Humphreys who, it is possible, may not have them. It seems to me that it ought to be possible to do that within relatively short order.
36. It also seems to me, again so the parties can be clear as to where they stand, that the claimant should do two things. Firstly, within a period of time the claimant should produce, and by “produce” I mean file at this Court and serve on the respondents, copies of (1) all applications and requests which they made to the County Court either under the civil restraint order or to set aside District Judge Humphreys’ original judgment, and including all applications and requests that (i) were ruled on by District Judge Humphreys in November 2021 and/or (ii) which are relied on for the purposes of the provisions of paragraph one of Master Brown’s order of 8 March 2021, together with (2) all responses from and directions and orders made by the County Court with regards to them.
37. Secondly, the claimant should file and serve a witness statement saying, firstly, why the claimant says, if at all, that the stay granted by Master Brown continued firstly, until District Judge Humphreys’ order of November 2021, and secondly, following District Judge Humphreys’ order of 2021.
38. Thirdly, the witness statement should explain precisely why the claimant did not make this application earlier and including, firstly, following receipt of the order and evidence which I made and were before me in July 2021, secondly, following District Judge Humphreys’ order of November 2021, and thirdly, following Master Brown’s order of May 2022.
39. It seems to me that the above would be particularly useful for the following reasons. Firstly, in relation to what I want the respondents to produce, because I am somewhat unclear as to precisely what happened with regards to the County Court and have a certain slight concern, depending on what was actually provided by the County Court to the respondents, either that something was accidentally mistaken by the County Court or that something was misinterpreted, whether by the County Court or by the respondents.
40. Secondly, because if the claimant is going to say that the claimant made requests and applications in accordance with Master Brown’s order so as to avoid the stay coming to an end under its provisions, it should be absolutely clear as to what the claimant says that the claimant did, and also as to why the claimant says that, howsoever the Court responded, that did not amount to a refusal.
41. It may well be that the claimant made an application to set aside the judgment, but did not request permission under the civil restraint order, which at first sight would result in the stay having come to an end; but I simply do not know what happened, and it seems to me that, if the claimant is going to say the stay continued, the claimant must produce the relevant material.
42. It also seems to me still that the claimant’s position with regards to delay and the claimant’s explanations for it are potentially unsatisfactory at least in terms of the claimant’s present material, and that much more of an explanation is required.

43. It seems to me that all of this will assist District Judge Humphreys in coming to a conclusion; if indeed an application is to be made for permission under the civil restraint order within the time period which I am going to limit.

End of Judgment

Approved



5.4.2023

Transcript from a recording by Ubiquis
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