



Neutral Citation Number: [2020] EWHC 2583 (QB)

Case No: QB-2020-000978

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/10/2020

Before :

THE HONOURABLE MRS JUSTICE STEYN DBE

Between :

BEATRICE ANASTASIA GAVIGAN

Claimant

- and -

ANITA ELAINE NORTON

Defendant

Fenner Moeran QC (instructed by **Palmers Law**) for the **Claimant**
Emma Read (instructed by **RHF Solicitors**) for the **Defendant**

Hearing dates: 9 September 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MRS JUSTICE STEYN DBE

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 1 October 2020 at 10:00

Mrs Justice Steyn :

A. Introduction

1. This is an application brought by the Claimant, Mrs Gavigan, for permission to bring committal proceedings against the Defendant, Mrs Norton. Mrs Gavigan brings this application pursuant to CPR 32.14, alleging that Mrs Norton has made or caused to be made false statements in documents verified by statements of truth without honest belief in their truth.
2. This application arises out of a claim which was originally in the High Court but was transferred to the County Court at Central London, namely, *Beatrice Gavigan v (1) Herbert Norton (Deceased) and (2) Anita Norton* (“the main proceedings”). The trial in the main proceedings is listed for hearing in the County Court commencing on 30 November 2020.
3. Mrs Gavigan contends that Mrs Norton has made multiple false statements in four documents, namely:
 - i) Mrs Norton’s original defence dated 1 November 2018 (“the Original Defence”);
 - ii) Mrs Norton’s reply to a November 2018 Part 18 request for further information (“the 2018 Part 18 Reply”);
 - iii) Mrs Norton’s application notice seeking permission to amend the Original Defence, stating her belief in the truth of a draft Amended Defence (“the Draft Amended Defence”); and
 - iv) Mrs Norton’s witness statement of 9 September 2018 (“Mrs Norton’s first statement”).
4. The application is supported by the second affidavit of Mr Luke Morgan, a partner in the firm of solicitors representing Mrs Gavigan. Mrs Norton has made a witness statement dated 20 April 2020 in response to the claim for her committal.

B. Procedure

5. Contempt of court covers many different types of misbehaviour. The form of contempt of court alleged in this application is that covered in CPR 32.14 which provides:

“(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(Part 22 makes provision for a statement of truth)

(Section 6 of Part 81 contains provisions in relation to committal for making a false statement of truth.)” (emphasis added)

6. Accordingly, section VI of CPR 81 applies. CPR 81.18 provides:

“(1) A committal application in relation to a false statement of truth or disclosure statement in connection with proceedings in the High Court, a Divisional Court or the Court of Appeal, may be made only—

(a) with the permission of the court dealing with the proceedings in which the false statement or disclosure statement was made; or

(b) by the Attorney General.

...

(3) A committal application in relation to a false statement of truth or disclosure statement in connection with proceedings in the County Court may be made only—

(a) with the permission of a single judge of the High Court;
or

(b) by the Attorney General.” (emphasis added)

7. In this case, the main proceedings originated in the High Court and the allegedly false statements were made while the main proceedings were still in the High Court. It might be said that this application relates to a “false statement ... in connection with proceedings in the High Court” within the meaning of CPR 81.18(1). However, the court which is now dealing with the main proceedings is the County Court. If CPR 81.18(1) were interpreted as covering a case such as this, the effect would be to give the County Court power to grant permission to bring committal proceedings where the proceedings began in the High Court, even though the County Court has no such power when proceedings begin there. The parties agree, and it is plainly right, that CPR 81.18(1) should not be interpreted as applying to an application such as this where the proceedings are now in the County Court. The words “in connection with proceedings in the High Court” in CPR 81.18(1) refer to proceedings which are currently in the High Court. This case falls within CPR 81.18(3).

8. CPR 81.14 provides:

“(1) The application for permission to make a committal application must be made by a Part 8 claim form which must include or be accompanied by—

(a) a detailed statement of the applicant’s grounds for bringing the committal application; and

(b) an affidavit setting out the facts and exhibiting all documents relied upon.

(2) The claim form and the documents referred to in paragraph (1) must be served personally on the respondent unless the court otherwise directs.

(3) Within 14 days of service on the respondent of the claim form, the respondent—

(a) must file and serve an acknowledgment of service; and

(b) may file and serve evidence.

(4) The court will consider the application for permission at an oral hearing, unless it considers that such a hearing is not appropriate.

(5) If the respondent intends to appear at the permission hearing referred to in paragraph (4), the respondent must give 7 days' notice in writing of such intention to the court and any other party and at the same time provide a written summary of the submissions which the respondent proposes to make.

(6) Where permission to proceed is given, the court may give such directions as it thinks fit, and may—

(a) transfer the proceedings to another court; or

(b) direct that the application be listed for hearing before a single judge or a Divisional Court.”

9. Practice Direction 81 (Applications and Proceedings in Relation to Contempt of Court) provides at paragraph 5.2:

“Where the permission of the court is sought under rule 81.18(1)(a) or 81.18(3)(a) so that rule 81.14 is applied by rule 81.18(2) or 81.18(4), the affidavit evidence in support of the application must—

(1) identify the statement said to be false;

(2) explain—

(a) why it is false; and

(b) why the maker knew the statement to be false at the time it was made; and

(3) explain why contempt proceedings would be appropriate in the light of the overriding objective in Part 1.”

C. Use of evidence disclosed in the main proceedings

10. As the main proceedings are in the County Court, these proceedings were commenced by Part 8 Claim Form and so they are technically separate proceedings to the main proceedings. Consequently, Mrs Gavigan sought permission to use some of the witness statements and documents disclosed in the main proceedings, while emphasising that permission would not be needed in respect of many of them because they had been read in open court.
11. Ms Read, Counsel for Mrs Norton, confirmed that the Defendant had no objection to any of the witness statements or documents disclosed in the main proceedings being used in these proceedings. Accordingly, I grant permission, if and to the extent that it is required, to use any evidence disclosed in the main proceedings in these proceedings.

D. The law

12. There was no dispute between the parties regarding the applicable legal principles. The principal cases to which my attention was drawn were *KJM Superbikes Ltd v Hinton* [2009] 1 WLR 2406, *Malgar Ltd v RE Leach (Engineering) Ltd* [1999] EWHC 843 (Ch), *Kabushiki Kaisha Sony Computer Entertainment Inc v Ball* [2004] EWHC 1192 (Ch), and *Berry Piling Systems Ltd v Sheer Projects Ltd (No.2)* [2013] EWHC 347 (TCC).
13. In *Newson-Smith v Al Zawawi* [2017] EWHC 1876 (QB), Whipple J helpfully summarised the principles at [6]:

“(a) The question for the Court at this stage is not whether a contempt of court has in fact been committed, but whether proceedings should be brought to establish whether it has or not.

(b) Because proceedings for contempt of court are public law proceedings, when considering whether to give permission the Court must have regard to the public interest alone. That involves two key considerations:

i) Is the case one in which the public interest requires that the committal proceedings should be brought; and

ii) Is the applicant a proper person to bring them?

c) A number of factors are likely to be relevant to the assessment of the public interest in any given case. On the one hand, there is a public interest in drawing the attention of the legal profession and potential witnesses to the dangers of making false statements to the Court. On the other hand, the Courts should guard against exercising the discretion too freely in favour of allowing proceedings to be pursued by private persons. Specifically:

i) the court should not grant permission unless there is a strong prima facie case that the allegations will be proved to the criminal standard at a substantive hearing;

ii) the Court must not stray into determining the merits of the case at the permission stage;

iii) in cases where false statements are at issue, the applicant must show a strong prima facie case not only that the statement was false but also that it was known at the time to be false;

iv) in assessing the strength of the applicant's prima facie case, the Court will take account of all the circumstances of the case, and will have regard in particular to the circumstances in which the statement was made, the state of the maker of the statement's mind, including his understanding of the likely effect of the statement, the use to which the statement was put in the proceedings, the extent to which the false statements were persisted in, and any delay in warning the respondent that he or she may have committed contempt by making a false statement at the earliest opportunity; and

v) The court must guard against the risk of allowing vindictive litigants to use committal proceedings to harass persons against whom they have a grievance.

d) The Court must also consider whether it is proportionate to allow committal proceedings to be brought. That involves an assessment of the strength of the case against the respondent(s), the amounts in money terms which were involved in the proceedings in which the allegedly false statements were made and which were affected by those statements, the likely costs involved on both sides, and the amount of court time likely to be involved in managing and hearing the matter.

e) The Court must also consider whether contempt proceedings would further the overriding objective of the CPR to deal with cases justly."

14. Whipple J further observed:

"7. ... First, to establish a contempt, the false statement must have been made with the intention that, or at least in the knowledge that it was likely that, the administration of justice would be interfered with as a result, see *Tinkler v Elliot* [2014] EWCA Civ 564 at [44]:

"in order for an allegation of contempt to succeed it must be shown that ... in addition to knowing that what you are

saying is false, you had to have known that what you are saying was likely to interfere with the course of justice” citing *Edward v Nield v Loveday [2011] EWHC 2324 (Admin)*.

8. Secondly, a false statement is one which was not true, and which when made the maker knew was not true, or did not honestly believe to be true. There is a fine dividing line between mere carelessness or negligence on the one hand, and recklessness in the making of the statement on the other. Recklessness is sufficient *mens rea* for contempt (*Berry Piling Systems Ltd* at [27]). However, a statement is made recklessly only if the maker

“consciously has no idea whether it is right or wrong ... Recklessness is a concept which judges can address as they do in a criminal context. Logic also suggests that a person who represents as true something which he or she consciously does not know whether it is true or not is consciously misleading the Court and that should be considered as contemptuous” (ibid, at [28]).

Optimism or even carelessness in the making of statements will not be sufficient to establish that a party is in contempt (ibid, at [30(c)]).

...

12. ... There must be a subjective element – that is, conscious engagement with the issue which is the subject of the statement – before it can be said that the statement, if it turns out to be untrue, was made recklessly and thus without an honest belief in its truth. Anything less than conscious engagement is likely to amount to mere carelessness. ...”

15. Accordingly, I approach the present case on the basis that the discretion to grant permission should be exercised with great caution; that there must be a strong prima facie case shown against the Defendant, but I should be careful not to stray into the merits of the case; that I should consider whether the public interest requires the committal proceedings to be brought; and that such proceedings must be proportionate and in accordance with the overriding objective.

E. The main proceedings

16. Mrs Norton is 73 years old and a widow. She was married to Herbert Norton (“Mr Norton”) for many years until he died on 10 July 2017. Since the 1970s, across five decades, Mrs Gavigan and Mr and Mrs Norton were good friends. In 1990, Mrs Gavigan moved to the United States of America, where she still lives.

17. Mrs Norton was Mr Norton's second wife. Stephen Norton is one of Mr Norton's sons by his first marriage. In her third witness statement, Mrs Norton has explained that:

“A major rift emerged in the family as a result of our marriage. Stephen came to bear enormous animosity towards ... us, and to our son (and Herbert's step son) Paul Snow. Eventually Stephen and ... Herbert became embroiled in litigation (two sets of proceedings; one issued by each party) and the ownership of the Business. The proceedings settled but unsurprisingly their relationship never recovered.”
18. The main proceedings have been brought by Mrs Gavigan, who is now 80 years old and has limited means, against Mr Norton's estate and Mrs Norton. Both the main proceedings and the committal proceedings are funded (substantially, if not wholly) by Stephen Norton. Mr Fenner Moeran QC, Counsel for Mrs Gavigan, submitted that people often make committal applications “*with at least one eye on vengeance*” - although he has clarified in representations regarding the draft judgment that it is not admitted Stephen Norton has any such motive for funding the proceedings – but even if an applicant's motive is “*vindictive*” that would not be a reason not to grant permission, as long as the application is not oppressive and does not itself obstruct the administration of justice. Mr Moeran submitted this application for permission should be judged by reference to the grounds which he contends are not based on any intention to be vindictive towards Mrs Norton.
19. In the main proceedings, Mrs Gavigan claims that she is the owner of a caravan located in the grounds of a property known as Elmhurst which was the marital home of Mr and Mrs Norton, a claim which Mrs Norton has conceded in the Amended Defence. Mrs Norton has also conceded that Mrs Gavigan is entitled to the net proceeds of the caravan rental income, and to remove the caravan from Elmhurst, albeit she contends that the cost of removing it exceeds any net rental income.
20. Mrs Gavigan also seeks an account and consequential orders in relation to (i) the rental income from the caravan, (ii) bank accounts in Mrs Gavigan's name which were used and operated by Mr and Mrs Norton, and (iii) in respect of an endowment policy which it is alleged was attached to a property belonging to Mrs Gavigan which Mr Norton sold for Mrs Gavigan, acting pursuant to a power of attorney, in 1996. No reliance is placed in these committal proceedings on the alleged endowment policy and so I shall not address it further.
21. When Mrs Gavigan moved to the USA, she owned a property at 61 St Mary's Crescent, Basildon (“Mrs Gavigan's property”). From 1992 onwards, Mr Norton managed letting Mrs Gavigan's property on her behalf. In 1996, Mrs Gavigan executed a power of attorney in favour of Mr Norton (“the 1996 Power of Attorney”), enabling him to sell Mrs Gavigan's property.
22. Mrs Gavigan's property was sold shortly after the execution of the 1996 Power of Attorney. Mr Norton informed Mrs Gavigan that the net proceeds of sale were £10,000. Mr Norton borrowed this £10,000 to use as a deposit to purchase Elmhurst, putting the property into Mrs Gavigan's name. It is common ground that the £10,000 was repaid and Mrs Gavigan does not have any interest in Elmhurst. The Amended

Defence explains that Mrs Norton believes that Mr Norton may have purchased Elmhurst in Mrs Gavigan's name "*to conceal the fact of the purchase from his ex-wife*".

23. When she moved to the USA, Mrs Gavigan had a bank account with Lloyds TSB (later TSB). The Defendants' position, as pleaded in the Amended Defence, is that after the proceeds from the sale of Mrs Gavigan's property were remitted to her, she agreed in writing to allow Mr Norton to continue to operate the bank account in her name for his own purposes. Four other Lloyds TSB accounts were opened by Mr Norton in Mrs Gavigan's name. The Defendants' position is that all the accounts were operated by Mr Norton for his own purposes, with the agreement and acquiescence of Mrs Gavigan. The Amended Defence states:

"11.5 The Second Defendant [i.e. Mrs Norton] was not privy to the First Defendant's exact reasoning in conducting his affairs in this way. It was nevertheless characteristic of the First Defendant to wish to keep his affairs confidential so far as possible. Although a very successful businessman the First Defendant was not given to formalising matters and placed great store in personal relationships. The Second Defendant knew him to believe throughout his life that confidentiality as to his affairs was an end in itself; the court should therefore not assume it was a means to achieve some improper outcome.

11.6 The Defendants will rely on evidence that, of the relatively small amount of money that passed through the Bank Accounts, much of it was of a character that could not possibly be construed as belonging to the Claimant. For example, the bulk of the money passing through the Bank Accounts were legacies left to the Defendants by their own parents (on which, incidentally, tax had been paid in full). It is fanciful to suggest this money was intended to belong beneficially to the Claimant."

24. The Reply to the November 2018 Part 18 Request states:

"3.5 The sale of St Mary's Crescent [i.e. Mrs Gavigan's property] led to a reconciliation of the money owed to the Claimant. The First Defendant asked the Claimant if she would be content to keep the account open and allow him to use it for his own transactions. The Claimant agreed to this in the clearest possible terms in a letter on which the Defendants will rely:

'I don't have a problem with you keeping the Account open and using it.'

25. The first affidavit of Luke Morgan, on behalf of the Claimant, states that Mrs Gavigan "disputes the circumstances of and extent of such consent", that is, consent to use bank accounts in her name for the Defendants' own purposes, but that "it is not relevant for the purposes of this application".

26. In 2013, Mrs Norton asked Mrs Gavigan to execute a power of attorney appointing Mrs Norton as her attorney, and she did so (“the 2013 Power of Attorney”). There is a dispute as to the reasons for the 2013 Power of Attorney. The Particulars of Claim state that a new power of attorney was sought because Mr Norton was aging and no longer able to handle matters. The Amended Defence states at paragraph 10.2:

“The real reason for the power of attorney is that it was necessary to sell a property known as “The Old School Chapel” that the Claimant was holding as trustee for the Defendants, and was executed on the advice of Holmes and Hills Solicitors. This bare trust arrangement does not seem to be disputed and is an example of how the Claimant periodically acted as nominee owner of property for the Defendants (as was the fact that Elmhurst was originally purchased in the Claimant’s name, as she seems to admit). The Claimant has also provided these nominee services to Stephen, for example in respect of a property at 8 Church Road, Benfleet. A further purpose of the 2013 Power of Attorney was to enable the Second Defendant to act for the Claimant in legal proceedings. The legal proceedings in question were yet another set of intra-family proceedings, involving Stephen’s brother Paul Norton (funded and supported by Stephen) seeking to assert an entitlement to a greater share of the proceeds of sale of The Old School Chapel. It should be noted, however, that the 2013 Power of Attorney was not used in relation to the Bank Accounts and was never registered with any bank.”

27. The substantive hearing of the main proceedings has been listed for trial in December 2020.

F. The particulars of contempt

28. The claim form identifies 32 statements which are alleged to be false and made, or caused to be made, by Mrs Norton without an honest belief in their truth, and to be contained in a document verified by a statement of truth.
29. First, more than half statements relied on concern Mrs Norton’s denial – prior to service of the Amended Defence – of Mrs Gavigan’s ownership of the caravan, entitlement to the rent therefrom, and her denial of the truth of an affidavit made by Mr Norton in 2015 in which he said the caravan belonged to Mrs Gavigan (“Mr Norton’s 2015 Affidavit”):
- i) Particulars of Contempt 1(c): “That *‘the caravan is not owned by the claimant’* and averred there to be a private agreement with Mr Norton for the Claimant to be named as landlord (paragraph 10 and 23 of the Original Defence)”;
 - ii) Particulars of Contempt 1(d): “That *‘the claimant is **not** entitled to the rental income on the Caravan’* (paragraph 23 of the Original Defence.) (Emphasis added)”;

- iii) Particulars of Contempt 2(a): “*The Caravan was purchased by the First Defendant for his use and that of the Second Defendant [i.e. the Defendant in these proceedings, Mrs Norton]. No other person (including in particular the Claimant) had any role in its ownership*’ (Response 1 to Request 1)”;
- iv) Particulars of Contempt 2(b): “*The Caravan was owned at all material times by the First Defendant.*’ (Response to Request 2)”;
- v) Particulars of Contempt 2(c): “*The First Defendant was (properly considered) the landlord when the Caravan was rented out, in that he was its owner.*’ (Response 1 to Request 3)”;
- vi) Particulars of Contempt 2(d): “*It is correct to say that the Claimant’s name appears on the tenancy agreements in respect of the Caravan. Her role was that of a nominee and/or an agent of the First Defendant’s.*’ (Response 2 to Request 3 and point repeated in Response to Request 7)”;
- vii) Particulars of Contempt 2(e): “*The money paid by way of rent [on the Caravan] was at all times the property of the First Defendant*’ (Response 1 to Request 4)”;
- viii) Particulars of Contempt 2(f): “*the payments [i.e. as to the rent] were received into an account in the Claimant’s name but were the First Defendant’s property.*’ (Response to Request 6)”;
- ix) Particulars of Contempt 2(i): “That the First Defendant had lied in an affidavit made in earlier proceedings and presented to the court in those earlier proceedings, in which he stated that the Claimant was the owner of the Caravan and entitled to rents therefrom (Response to Request 15)”;
- x) Particulars of Contempt 3(a): “*the Caravan was owned by the First Defendant*’. (Draft Amended Defence para 7.1);
- xi) Particulars of Contempt 3(b): “*It is admitted that the rent for the Caravan was received into a bank account in the First Defendant’s control but in the Claimant’s name ... the Defendants aver that this was an administrative arrangement which did not operate to confer on the Claimant any right of ownership to either the Caravan or the rental proceeds of the Caravan*’. (Draft Amended Defence para 7.3)”;
- xii) Particulars of Contempt 3(c): “*the Claimant and the First Defendant had agreed that the Claimant’s name would appear as the ‘landlord’ in any tenancy agreements in respect of the Caravan. The reason for this arrangement was a desire on the part of the First Defendant to avoid his name being associated with renting the Caravan ... as a matter of law the Claimant was the First Defendant’s agent*’ (Draft Amended Defence para 8.1)”;
- xiii) Particulars of Contempt 3(d): “*It is admitted that the tenancy agreements over the caravan were in the Claimant’s name but it is denied that this fact evidences the Claimant’s ownership of the Caravan*’ (Draft Amended Defence para 9.2)”;

- xiv) Particulars of Contempt 3(e): “*It is admitted that the rent in respect of the Caravan was paid into a bank account in the Claimant’s name, but it is denied that this fact evidences the Claimant’s ownership of the Caravan.*” (Draft Amended Defence para 9.2);
 - xv) Particulars of Contempt 3(f): “*It is admitted that the First Defendant made the witness statement as alleged in previous litigation ... but the Second Defendant infers that the First Defendant may have untruthfully stated that the Caravan belonged to the Claimant ... the Defendants contend that the Caravan was and remains the First Defendant’s property.*” (Draft Amended Defence para 9.3)”
 - xvi) Particulars of Contempt 3(g): “The Defendants in proceedings claim no: F10-CL-676 did not know why the First Defendant (on their then case) lied in the affidavit or put leases of the Caravan in the Claimant’s name; (Draft Amended Defence paras 8.1, 9.3, 11.3)”
 - xvii) Particulars of Contempt 4(b): “*“from either 1996 or 2001 at the latest the claimant had no interest in any income from the caravan’* (paragraph 13 of the AN Witness Statement)””; and
 - xviii) Particulars of Contempt 4(f): “*“this affidavit was made by the my (sic) late husband with the full knowledge, approval and support of the claimant ... and the claimant was fully aware that by agreeing to, and supporting, the content of the affidavit that no real transfer, confirmation or other rights of ownership or benefit, would be conveyed to the claimant. The claimant is now attempting to construct a narrative around this affidavit in an attempt to seize any income derived from the caravan’* (paragraph 12 of the AN Witness Statement)”
30. The remaining particulars of contempt are described by the Claimant as covering denial of acting as attorney for Mrs Gavigan, or operating control over Mrs Gavigan’s financial affairs and assets in the UK, from the 1996 Power of Attorney onwards, or owing a duty of account, denial of Mrs Gavigan’s entitlement to any monies in the TSB bank accounts in her name and denial of holding any property for Mrs Gavigan:
- i) Particulars of Contempt 1(a): “That she denied that either she or the First Defendant in those proceedings (“the First Defendant”) had, from at least the 1996 Power of Attorney, had control over the Claimant’s financial affairs and assets in the United Kingdom, including the Caravan and any rents received therefrom. (Paragraph 19 [of the Original Defence])”;
 - ii) Particulars of Contempt 1(b): “That ‘*Mr Norton’s [the First Defendant’s] duties as an attorney and/or agent ceased upon the sale of the claimant’s property*’ (i.e. in 1996) (Paragraph 20 of the Original Defence)”;
 - iii) Particulars of Contempt 1(e): “that ‘all monies paid into the Bank Accounts in the Claimant’s name were not for the Claimant or for the Claimant’s benefit’ (Emphasis added) and averred there to be a private agreement for Mr Norton to open and use bank accounts in the Claimant’s name from 1996 (Paragraphs 10 and 23 of the Original Defence)”;

- iv) Particulars of Contempt 1(f): “That ‘*no property was held by the 2nd Defendant for the Claimant*’ (paragraph 23 of the Original Defence) (Emphasis added)”;
- v) Particulars of Contempt 1(g): “They admitted that ‘*no monies were paid out to the Claimant. As no monies were due to the Claimant.*’ (Paragraph 14 of the Original Defence).”
- vi) Particulars of Contempt 1(h): “They denied that ‘*the Claimant is entitled to (i) an account and enquiries of all the Claimant’s monies and property received, handled or controlled by Mr Norton and/or the 2nd Defendant since 1996 as, save for the proceeds of sale of the Property, which the Claimant admits to receiving, no such monies or property was received, handled or controlled for the Claimant by [the Defendants].*’ (Emphases added) (Paragraph 24 of the Original Defence”;
- vii) Particulars of Contempt 2(g): “‘It will be absolutely obvious when the court comes to evaluate the transactions on the Accounts ... that they were used by the First Defendant in respect of his own funds, and the rent from the Caravan is no different’. (Response 3.6 to Request 4);
- viii) Particulars of Contempt 2(h): “‘*All payments were beneficially owned by the First Defendant and/or the Second Defendant*’. (Response to Request 12);
- ix) Particulars of Contempt 3(h): “The Claimant is not beneficially entitled to the money in the bank accounts in her name, ‘*such entitlement as the Claimant may have had to any funds in the Bank Accounts was therefore held for the First Defendant on trust*’. (Draft Amended Defence para 11.4)”
- x) Particulars of Contempt 3(i): “‘*...the funds held in the Bank Accounts (other than the rent on the Property [i.e. Mrs Gavigan’s property] and proceeds of sale of the property ...) were the property of the Defendants.*’ (Draft Amended Defence para 14.3)”;
- xi) Particulars of Contempt 4(a): “‘*Any legal duties we owed the claimant as attorneys effectively ceased in either 1996 after the completion of the sale of the claimant’s property or in May 2001 when the claimant confirmed we could continue to use bank accounts in her name.*’ (Paragraph 4 of the AN Witness Statement);
- xii) Particulars of Contempt 4(c): “‘*All money paid into the account was for our sole benefit*’ (Paragraph 10 of the AN Witness Statement)”
- xiii) Particulars of Contempt 4(d): “‘*all money passing through the account was ours and from that date she has no legitimate claim to any money*’ (paragraph 19 of the AN Witness Statement);
- xiv) Particulars of Contempt 4(e): “‘*Mrs Gavigan has no right to any money passing through the account from at least May 2001*’ (paragraph 21 of the AN Witness Statement).”

31. Although some of the statements relied on appear in a draft amended defence which, being a draft, did not contain a signed statement of truth, the Claimant relies on the fact that it was put before the court together with an application notice seeking permission to amend; and the application notice stated the Claimant's belief in the truth of the draft amended defence. It was not contended on behalf of the Defendant that any of the particulars of contempt fail to meet the requirement or being contained in a document verified by a statement of truth.

G. Is there a strong prima facie case?

32. The Original Defence was filed at a time when Mrs Norton was unrepresented, whereas the Amended Defence represents the position she has taken with the assistance of legal representatives.

Ownership of the caravan

33. Mrs Norton has admitted, from the outset, that the caravan was let out in Mrs Gavigan's name and Mr Norton operated bank accounts in Mrs Gavigan's name, into which rent from the caravan (and other sums) were paid.
34. Mrs Norton has also admitted throughout these proceedings that, on 23 February 2015, Mr Norton made an affidavit of means in the context of the proceedings between Mr Norton and Stephen Norton. At paragraph 22 of the 2015 Affidavit, Mr Norton stated (omitting page references):

"I have used £23,000 of the proceeds to repay loans from Betty Bonner [i.e. Mrs Gavigan]. Betty is the owner of the mobile home currently situated on Elmhurst, which she used to use when visiting the UK (she emigrated to the USA in 1990). This is currently let out, and the rental income is £500 per month. As my wife and I both have Power of Attorney for Betty, we have access to her bank account (in which the rental payments accrue), and therefore we benefit from the rental money in that Betty allows us to use the account balance as interest-free credit (and we deduct the maintenance and energy costs of having the mobile home on our land). However, this is always eventually repaid, and this is the reason for the repayments which total £23,000. It was paid in smaller sums as this was because they represented different loans over the years." (Underlining added)

35. She has also admitted that Mr Norton instructed his solicitors to send an email to Mr Luke Morgan (who was then acting for Stephen Norton in the proceedings against Mr Norton) on 15 May 2015 which stated:

"Re Unit at Elmhurst

Further to previous correspondence, we have taken instructions and confirm as follows:

1. The rental unit was originally purchased by Mrs Bonner over ten years ago.

2. The rental unit is currently located on Elmhurst for no charge.
 3. There is no lease or contractual licence between the Nortons and Mrs Bonner in respect of the unit. The Nortons have simply given Mrs Bonner permission to keep the unit on Elmhurst.
 4. Consequently, Mrs Bonner keeps the unit on Elmhurst pursuant to a bare licence which is terminable at any time upon reasonable notice. ...”
36. However, prior to service of the Amended Defence on 18 December 2019, Mrs Norton’s position was that the caravan belonged to Mr Norton, having been bought by him with his own money. Mrs Gavigan’s name appeared on rental agreements for the caravan, but her role was that of nominee rather than beneficial owner.
37. In a Part 18 Request dated November 2018, the Claimant asked:
- “Request 15: is the truth of the contents of [paragraph 23 of the 2015 Affidavit] – generally, and in particular that the caravan was owned by the Claimant and that she was entitled to the £23,000 referred to – denied? If the truth is denied, is it denied in whole or in part, and if in part in which part?”
38. The Defendant’s Reply to this Request stated that the “truthfulness of the second sentence and the fourth and fifth sentences is denied” i.e. the passages underlined in paragraph 34 above. In her witness statement dated 9 September 2019, Mrs Norton said at paragraph 12:
- “This affidavit was made by ... my late husband with the full knowledge, approval and support of the claimant, who did so to support ... Herbert in a previous legal claim against his son, Stephen Norton, and the claimant was fully aware that by agreeing to, and supporting, the content of the affidavit that no real transfer, confirmation or other rights of ownership or benefit, would be conveyed to the claimant. The claimant is now attempting to construct a narrative around this affidavit in [an] attempt to seize any income derived from the caravan.”
39. The same position was taken in the Draft Amended Defence in which it was stated that Mrs Norton “*infers that the First Defendant may have untruthfully stated that the Caravan belonged to the Claimant*”. However, the Amended Defence which was subsequently filed and served took a different position.
40. In the Amended Defence, Mrs Norton pleads that the caravan was purchased by Mr Norton in or around 1996 and she was present with him when he bought it for about £1,500-£2,000 including delivery and siting of the caravan. Mrs Norton maintains that she “*believes that the First Defendant paid for the Caravan with his own money*”. Nevertheless, she has conceded that the caravan belongs to Mrs Gavigan, and that she is entitled to the net proceeds from the rental of the caravan since it was purchased in 1996, on the basis that in making the 2015 Affidavit and instructing his solicitors to

send the May 2015 email, Mr Norton's and Mrs Gavigan's mutual intention was to hold Mrs Gavigan out, and treat her as, the owner of the caravan.

41. In her third witness statement, dated 20 May 2020, Mrs Gavigan states:

“42. I believed and still do believe today that the money Herbert used to buy the caravan was his own. I have since accepted that the legal consequence of his having made the affidavit referred to, is that from that day Herbert was agreeing that the Claimant was the owner of the caravan. I believed and still believe that the contents of this affidavit were agreed between Herbert and the Claimant although I do not know why this was.

43. I believed that the contents of the affidavit could not be true as I believed that the caravan had been bought by Herbert with his own money and therefore must have been his, so I did not know why he would say that it was the Claimant's. I now understand that a chattel can be transferred between people by intention and agreement. In all the circumstances and with the costs of the litigation mounting, by December 2019 I was prepared to admit that the legal effect of the affidavit in May 2015 [sic] was that from that date both Herbert and the Claimant were agreeing and declaring that the caravan should be treated as belonging to the Claimant. My amended defence says just that.”

42. Mrs Norton has retracted the various statements that the caravan does not belong to Mrs Gavigan, conceding that it belongs to her and she is entitled to the net rental proceeds. So, to that extent, Mrs Norton accepts that her previous statements were incorrect. She has said that “[o]n the basis that I might have been wrong about the affidavit being untrue, the most likely explanation for Herbert making that statement was his and the Claimant's intention. With hindsight this seemed more likely than Herbert having perjured himself”.

43. Mr Moeran contends that Mrs Norton was at the very least reckless as to the truth of the 2015 Affidavit and 2015 email. He submits that she had all the information necessary to realise that the caravan belonged to Mrs Gavigan and what “hindsight” means is, at best, ‘having actually thought about this’.

44. In my judgment, the Claimant has not come close to establishing a strong prima facie case that Mrs Norton made the statements referred to in paragraph 29 above without an honest belief in their truth:

- i) Mrs Norton's consistent evidence has been that Mr Norton bought the caravan with his own money. It is possible the Claimant may make headway in challenging that contention in cross-examination, but as matters currently stand there is no evidence that some other source of funds was used.
- ii) If the caravan belonged to Mrs Gavigan from 1996 when it was bought, it is somewhat surprising that there was no agreement as to the basis on which Mrs

Gavigan was entitled to keep it on Mr and Mrs Norton's property, she made no claim in respect of it for more than 20 years after it was purchased (despite her limited means), and she claims to have become aware of her ownership in December 2009.

- iii) It is far from implausible on the evidence before me that Mr Norton took extensive steps to keep his financial affairs hidden from his ex-wife and more broadly (including maintaining confidentiality vis-à-vis Stephen) by purchasing property using nominees (including Mrs Gavigan in respect of the purchase of Elmhurst and The Old School Chapel), putting leases into the name of a nominee, and by using bank accounts in the name of a nominee.
 - iv) It is common ground that at least part of paragraph 23 of the 2015 Affidavit is untrue. This was an affidavit regarding his means in which Mr Norton claimed to have used £23,000 of the proceeds of sale of a property in Spain to repay loans from Mrs Gavigan. There is a dispute as to whether any such sum was owed to Mrs Gavigan, but it is not the position of either party that he was telling the truth when he said a £23,000 repayment had been made.
 - v) In the circumstances, knowing her late husband, having at least some understanding of the way in which he dealt with his financial affairs, understanding the depth of the rift between Mr Norton and Stephen Norton, in the context of which the 2015 Affidavit was made, the submission that it was reckless of Mrs Norton to believe that Mr Norton lied about one of his assets in an affidavit of means made in proceedings against his son has no foundation.
 - vi) It is quite possible that given the opportunity to cross-examine Mrs Norton, Mr Moeran might make headway in demonstrating inconsistencies regarding the degree to which she engaged in and was aware of the content of the telephone conversation between Mr Norton and Mrs Gavigan regarding the 2015 Affidavit. But in my view this possibility comes nowhere near what is required for the grant of permission to bring contempt proceedings.
45. Mr Moeran submitted that it is implausible that Mr Norton intended to give away the caravan in 2015 so either Mrs Norton was lying before, or she is lying now in conceding ownership of the caravan. However, first, the particulars of contempt include no allegation that in conceding that Mrs Gavigan owns the caravan Mrs Norton has lied – quite the contrary. Secondly, it is hard to see how it could be said that in conceding the claim Mrs Norton has made a statement that is likely to interfere with the course of justice. Even if she remains doubtful as to whether Mr Norton intended to give the caravan, and any net rental proceeds, to Mrs Gavigan, Mrs Norton must be able to concede the claim. Thirdly, Mrs Norton does not state an unequivocal belief that Mr Norton intended to treat Mrs Gavigan as the owner of the caravan from 2015, rather she has surmised that this is the more likely explanation.

Powers of attorney, duty to account and denial of monies due to Mrs Gavigan

46. Mrs Norton has acknowledged from the outset that Mrs Gavigan executed a Power of Attorney in favour of Mr Norton in 1996 and in favour of herself in 2013. The meaning and effect of those Powers of Attorney will be a matter for the court. Mrs

Norton's position was that each Power of Attorney was executed for a specific purpose and ceased to have effect once that purpose had been effected. That was the position that she took before she had instructed legal representatives. I agree with Ms Read that while Mrs Norton's statements as to the legal effect of the Powers of Attorney were wrong, an incorrect understanding of a legal document does not show to the requisite standard that Mrs Norton had no honest belief in the truth of the statements that she made.

47. It is not disputed that, in principle, a duty to account follows from the fact that the late Mr Norton and Mrs Norton both held Powers of Attorney for Mrs Gavigan. The contention that the County Court should not order an account is based, as I understand it, on a legal argument that the value is so low or negligible that the court should exercise its discretion against making such an order. That is a matter for the County Court. Insofar as Mrs Norton's statements that she was not required to account are concerned, they followed from her mistaken belief that the Powers of Attorney had ceased to have effect. Such statements do not meet the threshold for granting permission to bring contempt proceedings.
48. As regards statements that the Defendants did not hold any monies or property belonging to Mrs Gavigan:
 - i) I have already addressed the caravan and net rental proceeds in respect of the caravan.
 - ii) Mrs Gavigan claims to be entitled to proceeds on an endowment policy, but as I have said this is not relied on in support of this application. I note that no documentary evidence supporting the existence of an endowment policy has been produced, nor any details of the financial institution with which it is claimed to have been held.
 - iii) Mrs Gavigan's property was sold in 1996 and it is common ground that £10,000 received from the sale was paid by Mr Norton to Mrs Gavigan. I note that in the Claimant's skeleton argument it is said that the proceeds of sale were actually £10,903.77. However, the point has not been pleaded or the subject of any response. It will be a matter for the County Court to determine in the forthcoming substantive hearing. No allegation has been made that Mrs Norton was aware that the proceeds were £10,903.77 rather than £10,000.
 - iv) It has not been alleged that Mrs Gavigan had any other potential source of income in the UK over which the Defendants exercised control, save to the extent that before Mrs Gavigan's property was sold in 1996 (and before the 1996 Power of Attorney was executed), Mr Norton assisted with renting out the property. There is no evidence that I have seen of rent received in respect of Mrs Gavigan's property and not being paid to her, still less any evidence that would demonstrate Mrs Norton had no honest belief that money held in the accounts in Mrs Gavigan's name belonged to Mr and Mrs Norton.
 - v) Mrs Norton's evidence that the bank accounts in Mrs Gavigan's name were used by Mr Norton for his own purposes, with Mrs Gavigan's consent, has not been shown to be implausible. Indeed, as I have said, Mr Morgan states that Mrs Gavigan disputes the extent and circumstances in which she gave such

consent, but that is not a matter for determination in the context of this application. Moreover, Mrs Norton's evidence that legacies left to herself and her late husband by their respective parents were paid into the bank accounts in Mrs Gavigan's name supports the contention that the accounts were in fact being used for the Defendants' purposes.

vi) I recognise that here, too, there are some points on which Mr Moeran might well make progress if given the opportunity to cross-examine Mrs Norton, in particular in relation to the extent to which she (rather than solely Mr Norton) was involved in administering the bank accounts in Mrs Gavigan's name. But the inconsistencies raised do not come close to meeting the requisite threshold for granting permission on this application.

49. Accordingly, I have concluded that the Claimant has not established a strong prima facie case that Mrs Norton made the statements referred to in paragraph 30 above without an honest belief in their truth.

H. Wider considerations

50. My conclusion that there is not a strong prima facie case is sufficient to lead to the conclusion that the application should be dismissed. However, I consider that there are additional reasons to dismiss this application:

i) First, I do not consider that satellite litigation by means of a committal application would be proportionate. It is highly undesirable that at the same time as the main proceedings are being determined before the County Court there should be an outstanding committal application before the High Court against Mrs Norton. Committal proceedings would be an undesirable and unnecessary interference with the main proceedings, obstructing the disposal of what remains outstanding between the parties.

ii) Secondly, there is a risk that this application may be being brought or supported out of a vindictive desire to harass Mrs Norton. The Claimant's argument laid emphasis on a desire that Mrs Norton be punished "*preferably by way of imprisonment rather than fine*" (albeit the Claimant submitted that what form of punishment, and in particular whether any term of imprisonment should be suspended, would be a matter for the committal hearing). Mrs Norton's evidence is that the claim for an account was served on her on the first anniversary of her late husband's death and that Stephen Norton said to her in September 2016 that he would "*spend whatever it takes*" to destroy her. There is no apparent motive, on the evidence before me, for funding the main proceedings and this application other than to continue a feud against his stepmother by proxy. It would be contrary to the public interest to allow the court's processes to be used oppressively.

51. In the circumstances, the overriding objective would not be furthered by granting permission.

I. Conclusion

52. It follows from the reasons I have given above that the application is dismissed. A strong prima facie case has not been established and it would be disproportionate to pursue contempt proceedings. It would not be in the public interest to allow the application.