Neutral Citation Number: [2021] EWHC 1175 (QB)

Case No: QB-2021-001447

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
URGENT APPLICATIONS COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5th May 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

QUINCE GARCIA	**Claimant**
- and -	
PATRICIA GARCIA	**Defendant**

- -
- -

The **Claimant** in person, assisted by **Wendy Lewis**
Gabriel Awosika (Astute Legal Solicitors) for the **Defendant**

Hearing date: 4.5.21

Judgment as delivered in open court at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. This is a case about the fundamental importance of a claimant, including a litigant in person, providing an accurate and truthful picture to the urgent applications Court, when seeking interim mandatory orders. The central question is whether the Claimant did that, when he appeared before Martin Spencer J on 23 April 2021 and obtained orders against the Defendant, his ex-wife. She has applied to me to discharge those orders on the basis that he did not do so.

Mode of hearing

2. The hearing was a remote hearing by Microsoft Teams. I was satisfied that that mode of hearing was justified and appropriate; and that it involved no unfairness to anyone. As to open justice, the Courts which are convened to deal with urgent applications – including in this case a hearing fixed following a previous order for directions – are published activities in the cause list. Also published are email addresses usable by members of the press or public who wish to observe the hearing. The hearing was recorded. This judgment will be released in the public domain. I am satisfied that the open justice principle has been honoured.

Background

3. The parties were previously married and are now divorced. The family home was a property in Handen Road, Lewisham ("the House"). It has a top floor flat, and there is a distinct additional room on the first floor. As at 9 April 2021 the Defendant and their daughter were living in the top floor flat together with the additional room. On that date, as both parties agree, an altercation arose. Involved in an altercation was Mr Addai, whom the Claimant had allowed to live in the rest of the house. Mr Addai said he was a tenant, paying rent, with the Claimant as his resident landlord. The Claimant says Mr Adai was a guest, invited to stay as protection from the Defendant and the daughter. As a result of the altercation the police attended. The upshot of the police attending was that the Claimant was told by the police, based on what the police had been told by the Defendant, that the Claimant had no right to be in the house. The Claimant left and the Defendant promptly changed the locks.

4. There is a considerable 'back story' to those events. There are obviously a large number of highly controversial features to that 'back story'. What is uncontroversial is that on 15 March 2019 Recorder Thain at the Bromley Family Court (BFC) accepted non-harassment undertakings from the Claimant and made an occupation order pursuant to the Family Law Act 1996. The undertakings were for 6 months until 14 September 2019. The occupation order was for 3 months until 14 June 2019. The occupation order provided that the Defendant would occupy the top floor flat and the additional room; and the Claimant would occupy the remainder; each was required not to obstruct, harass or interfere with the other's peaceful enjoyment of their part of the property, and to give prior notice by text in the event of needing to enter the other party's part of the property. The occupation order recorded that the parties had agreed to the sale of the House and to cooperate towards that end. Earlier, on 4 February 2019 DJ Cridge at BFC had made an occupation order requiring the Claimant to allow the Defendant to occupy the top floor flat, that order being due to expire on 4 December 2019. Later, on 15 October

2019 DDJ Ahmed at BFC refused a without notice application by the Defendant for a non-molestation order and a fresh occupation order. At that stage, the Defendant was acting in person. She was subsequently represented by Mr Awosika in those proceedings. On 31 March 2021 Mr Awosika's firm wrote to the Claimant, at the House, informing him that he was not entitled to rent rooms at the house, and reminding him that he was "not the homeowner". The freehold title to the entirety of the House is in the name of the Defendant, as is confirmed by a Land Registry official copy dated 10 September 2019. It is agreed between the parties that there is, scheduled for 14 June 2021, a final hearing at BFC to deal with the financial aspects of the divorce, including what is to happen so far as money and property are concerned.

5. There have also been proceedings in the Woolwich Crown Court. In particular, on 2 September 2020 - in the context of the Claimant being acquitted of charges against him - the Crown Court made an indefinite restraining order prohibiting the Claimant from contacting the Defendant directly or indirectly by any means including telephone, text or internet, except through their daughter or through solicitors. A letter from the Crown Prosecution Service dated 3 September 2020 records that the Defendant was content for the prosecution to stop, provided that such protection were secured.

The Claimant's application to this Court

6. In circumstances where he had had to leave the House on 9 April 2021, and where the locks had been changed by the Defendant, the Claimant made an application on 19 April 2021 in the Queen's Bench Division to the urgent applications judge. The papers ("the Original Court Papers") were provided to the Court by email attachments, at 13:05 on 19 April 2021. The Original Court Papers, printed single-sidedly, comprised 22 pages. They included an application notice for an order: "to stop the illegal eviction of myself… from my home … Handen Road"; for "immediate protection of the Court under Part IV Family [Law] Act 1996" and "for an Occupation Order [to] be made in a further hearing under section 33 Family Law Act 199[6]". The papers included the Occupation Order of 15 March 2019 and the order of DDJ Ahmed on 15 October 2019, as well as the Restraining Order dated 2 September 2020 (together with a solicitors' letter relating to that order). They also included an Attendance Summary of the Claimant having attended the Emergency Department of a hospital on 12 April 2021 having suffered a neck injury in a road traffic accident that day. Finally, in the Original Court Papers, there was a witness statement dated 16 April 2021 from the Claimant. The basic thrust of the application was that the Claimant had been evicted from his own home, that he was now homeless and was being forced to live in his car, in circumstances where the intention had been for the Occupation Order to continue.

The Claimant's application is refused

7. At a hearing on Monday 19 April 2021 at which the Appellant and Ms Lewis (his niece) both addressed the Judge, Martin Spencer J refused the application. He said in his reasons that the Claimant had given no adequate reason why he was unable to give notice to the Defendant of the application. The Judge said that the Claimant appeared on the evidence before the Court to be entitled to an order that he be allowed to return to the House, but that the Defendant "must be given an opportunity to respond to the [Claimant]'s evidence and to this application before an order is made". The Judge said: "The [Defendant] must be given 48 hours' Notice of the making of this application. If despite such Notice, the [Defendant] does not submit evidence or reasons why the Order

should not be made, then the Court would be minded to make [an order granting] the application sought".

The application returns

8. The application returned, before the same Judge, on Friday 23 April 2021. The Claimant by email that day provided the Court with four documents: a second witness statement dated 23 April 2021; a screenshot of what was said to be a text message at 20:55 on 19 April 2021 to the daughter; a certificate of service (N215) confirming service of documents by first class post (next day delivery) on 20 April 2021; and a certificate of posting from the Post Office recording the posting on 20 April 2021 at 16:40 of a large letter to the building number and postcode matching the House.

The application is granted

9. By order that day (23 April 2021) Martin Spencer J recorded:

> "UPON the Claimant asserting that he had been unlawfully evicted from his home at… Handen Road … by the Defendant and that he was street homeless and had been sleeping in his motorcar; AND UPON the court adjourning the matter in order for the Defendant to be given notice of the making of this application and a chance to be heard; AND UPON the court being satisfied that the Defendant had been served by text and post with notice of the application and had not responded thereto"

The Judge then made these orders:

> "(1) The Defendant do forthwith permit the return to the premises at… Handen Road … (2) The Defendant shall not take any steps to interfere with the right of the Claimant to reside at… Handen Road … until further Order of the Court. (3) The order of Recorder Thain made in the [BFC] on 15 March 2019… be restored in like terms pending further application in the said matter. (4) The Claimant do apply to restore the matter as soon as possible before the [BFC] in order to resolve the dispute between the parties. (5) Upon the [BFC] been seized of the matter again, this Order shall cease to have effect. (6) The Defendant has liberty to apply on 24 hours notice to the Claimant to discharge this Order. (7) the Claimant shall serve this Order personally on the Defendant on Friday, 23 April 2021, alternatively by personally posting a copy of the Order through the Defendant's letterbox. (8) The costs of these proceedings today are reserved."

The applicant re-enters the House

10. Armed with the Order, the Claimant returned to the House, which he re-entered on 23 April 2021 and changed the locks.

The Defendant's application to this Court

11. Having seen the Order, the Defendant then instructed Mr Awosika, and they filed an application on Monday 26 April 2021 pursuant to paragraph (6) of the Order, to discharge the mandatory orders paragraphs (1)-(3). The essence of that application was two-pronged. First, the Claimant had misled the Judge by stating that he had served the documents on the Defendant, as recorded in the recital to the Order, because the

Defendant had neither seen any text, nor received any documents by post. Contained within the application was a statement by the Defendant, and the accompanying documents included a photograph of an envelope which the Post Office (using a redirection service to her work address) had delivered on 21 April 2021. The photograph shows a glossy fashion magazine which was said to have been all that was inside the envelope. The Claimant had deliberately not served the papers on the solicitors who he knew represented the Defendant. He had not served the papers, but had provided the fashion magazine in an envelope sent by special delivery. That was what the Defendant was saying as the first prong. Secondly, she said this. The Claimant had misled the Court by asserting that he had been unlawfully evicted and was street homeless and living in his car. The true position was that the Defendant had title to the property (demonstrated by the Land Registry document), the Occupation Order of 2019 had expired: and the Claimant had another place he could stay: an address in Avondale Rise SE15. That was an address where the Claimant's late stepfather had lived before passing away on 12 December 2021. A letter dated 3 March 2021 from the Southwark London Borough Council had been written to the Claimant at the Avondale Rise address. The stepfather's death certificate recorded the Claimant as having reported the death and given his "usual address" as the Avondale Rise address, and a gas appliance check (at a property in Algernon Road) on 31 March 2021 had been signed for by the Claimant giving the Avondale Rise address as his address. That was the second prong.

Directions and evidence

12. On 28 April 2021 Hilliard J gave directions for the hearing which took place before me yesterday. He directed that his order and the papers filed to support the application be served on the Claimant by 10am on 29 April 2021, as Mr Awosika did. Hilliard J ordered that the Claimant "files any evidence that he wishes to about the circumstances in which he gave the [Defendant] notice of the hearing before Mr Justice Martin Spencer on 19 April 2021 by 4pm on Friday, 30 April 2021". The Claimant then filed with the Court a witness statement dated 30 April 2021, together with documents relating to his health, relating to the gas work at Algernon Road, together with an estate agents letter dated 18th February 2020 written to the Claimant and the Defendant about marketing the House with a view to its sale. That evidence filed, pursuant to Hilliard J's order, was not served on the Defendant or on Mr Awosika, but I am prepared to accept Ms Lewis's explanation that she read "files" as meaning filing with the Court, because the same order elsewhere use the word "serve" to mean documents provided to the other party. With the assistance of my clerk, and lest there be a risk that the parties did not have any documents the Court had, I was able to send a single PDF to both parties early yesterday morning. Mr Awosika told me that that PDF was the first time that he or the Defendant had seen the Original Court Papers, and the first time they had seen the materials filed on 30 April 2021. Neither party asked for an adjournment. I am satisfied that neither party was prejudiced by any issue relating to papers.

Issues which do not fall for determination

13. There are a number of points made in the papers before the Court, and which have been made in the submissions to the Court, which are not material questions requiring resolution for the purposes of deciding this application. The Claimant urges me to accept that he has at all times being compliant with the Restraining Order made by the Woolwich Crown Court, and a previous order made by that Court on 15 December 2017 which expired 2 years later. He tells me that there have been over the years

incidents of violence towards him, including by the Defendant, that he has had to call the police and that he has video evidence. He tells me that the Defendant or the daughter have accessed his property and his documents, which explains why the Defendant was able to produce the Southwark LBC letter, the gas document and the death certificate. He tells me that it was because he discovered that Mr Addai was in cahoots with the Defendant and the daughter, that he asked Mr Addai to leave. I am satisfied that it is not necessary or appropriate to seek to resolve disputes on such matters, for the purposes of deciding the application to discharge the 3 mandatory orders.

The central question

14. The central question is this. Did the Claimant demonstrably materially mislead the Court in what he said to the Court in order to obtain the mandatory orders on 23 April 2021? If he did, then that would be a basis on which it could be appropriate for the Court to discharge those orders. That is the basis of the Defendant's application for those orders to be discharged, as I have explained.

The approach to that question

15. In approaching the resolution of the central question, I bear in mind that I am not a trial judge determining disputed factual issues, after hearing oral evidence with cross-examination. This is an application pursuant to a liberty to apply in an interim order. Having said that, the question of whether the Court was materially misled in making mandatory orders by way of interim relief is a relevant and appropriate question for a party to raise with the Court, when those orders have been made against that party. I do need to determine the application. But, in my judgment, at least in the purposes of the present case, I would need a high degree of confidence in relation to any disputed question in order to have a secure factual platform for the exercise of my judgment and discretion as to whether interim relief should be discharged.

Were the documents served?

16. I turn to the first prong to the application. As to the text, the Defendant denies having ever seen it. The Claimant has produced screenshots which on their face indicate that it was sent to the daughter, and that the daughter sent text messages of her own to the Claimant 7 days later on 26 April 2021, as part of the same chain of messages. The text does not refer to any document or to any specific hearing. It says this:

> "FAO: Ms Patricia Garcia. This is to formally put you on Notice. That after 48 hours you will be expected to attended the Royal Courts of Justice (RCJ). In the hearing of Mr Quince Garcia v Ms Patricia Garcia".

The Judge recorded in the recital to his order that he was satisfied, in part, by reference to the text, the screenshot of which the Claimant had produced. But, in my judgment, beyond doubt the Judge was materially influenced by the proof of posting and certificate of service, and by the witness statement in which the Claimant stated: "the application was served by Royal Mail guaranteed next day delivery service on 20 April 2021 (supporting documents enclosed)". That witness statement was signed by the Claimant and included a statement of truth. So did the certificate of service, also signed by the Claimant, which stated that the application had been served by 1st class post (next day delivery) on 20 April 2021. The Claimant produced the Post Office certificate of

posting. The Judge, entirely understandably, was satisfied that service by post of the application – at least – had been undertaken and that this was the proof of posting of that documentation.

17. The Defendant has made a statement, with its own statement of truth that what she received in an envelope was the fashion magazine. Her photographic evidence of the envelope which she received, redirected to her workplace, is a perfect match as to the £7.65 special delivery postage. The same details can be seen on the sticker in the top right hand corner of the A4 brown envelope in the photograph as appear on the certificate of posting which the Claimant placed before the Judge on 23 April 2021. There is no doubt at all that the envelope that the Defendant received is the one to which the certificate of posting relates. The question is: what was in the envelope that the Post-Office at Forest Hill on 20 April 2021 at 16:40 accepted for next day delivery?

18. The Claimant said this to me. "I didn't send a magazine. No. I sent all the papers that were printed out. I sent everything – all the papers that got printed out. I wanted proof.… Ms Lewis printed the papers in her house. The documents were printed on one side of the paper. I put them in the envelope and posted them. It was all these papers." I asked them if it would have been anything else. His answer was: "no, no, no". He said: "Ms Lewis gave me the documents. I put them all in there". We were able to look at the email which has been sent to the Court by Ms Lewis at 13:05 on 19 April 2021. As I have described, what were attached to that email were the Original Court Papers (that is, 22 pages if printed single sided). Having identified those as the papers which had been filed with the Court, at the hearing before Martin Spencer J on Tuesday 20 April 2021, when the Judge insisted that the Defendant be served with the application, I asked the Claimant whether that was what he meant by the "papers" that he had put in the envelope. "Yes", he told me. Ms Lewis told me that she had printed two sets of those documents: one for the Claimant to use himself and one set for him to post to the Defendant. She candidly told me that "I was not there" when the Claimant put documents in the envelope.

19. I put to the Claimant that surely it would be perfectly possible to weigh the envelope with the 22 pages single sided and see whether it weighed the 0.297 kg printed on the certificate of posting at the price £7.65, and then to weigh the envelope with the fashion magazine in it so as to be able to see what it weighed.

20. The Claimant clearly had not thought of that. When I raised it, his position began to shift. There were many twists and turns. He changed his position that it had been the documents filed with the Court – printed for him by Ms Lewis – and nothing else ("no, no no"). Ms Lewis suggested that what the Claimant had in fact done was to put both sets of the papers in the envelope. One problem with that, is that it would have left the Claimant without the set of papers that he needed for the hearing which took place on 23 April 2021, at which he appeared (a remote hearing before the Judge). I received no satisfactory answer that. Faced with the prospect of the Court having evidence on what the envelope weighed with the Original Court Papers, and what it weighed with the fashion magazine, here is what the Claimant told me: "Basically, what I did was I took a set of papers, and then I put everything in, to get rid of the papers. I went home and packed everything in there. I got rid of all the paperwork, all the bits and pieces. But 100%, a million percent I didn't send no magazine". Later, when the Court had concrete evidence on what the envelope actually weighed with the Original Court Papers, and with the fashion magazine, the Claimant's version of events took a new direction. He

now told me that he put a load of religious papers into the envelope together with the court papers. He held up a piece of paper which had printed material of a religious nature on it. He said: "I put them all in. I stuffed them all in. I jammed in religious papers. I kept one back. I forgot to put one in."

A live weigh-in

21. Mr Awosika is a solicitor and owes a duty to the Court, as I reminded him. This was a remote hearing at which we all sat in front of screens and were able to see each other. Mr Awosika was able to access weighing scales usable to weigh documents. He was not pre-prepared for that exercise. He had to access the scales from elsewhere in his building. He was then able to demonstrate, in front of the camera, for the Court and for the Claimant and Ms Lewis, what he was doing. He took photographs, and he took a video, all of which were emailed to the Claimant, to Ms Lewis, and to my clerk. The weigh-in demonstration showed clearly that the scales were set at 0.000kg when there was nothing on them. When the envelope was placed on the scales, containing the 22 pages of Original Court Documents, the weight shown was 0.127kg (127g). The 22 pages themselves weighed 0.109kg (109g). When the envelope was placed on the scales, containing the fashion magazine, the weight shown was 0.297kg (297g). The certificate of posting from Forrest Hill post office on 20 April 2021 at 16:40, which the Claimant produced to the Judge for the hearing on 23 April 2021 records that the post charge was £7.65 and the weight of the A4 envelope handed over at the counter for posting was 0.297kg. The envelope with the fashion magazine was a perfect fit with the weight on the certificate of posting. The Original Court Documents fell far short (they fell significantly short even if it was two sets: 127g + 109g = 236g). As I have explained, this was not a pre-prepared exercise on the part of Mr Awosika. He performed it at my invitation, after I had put to the Claimant that this would be a perfectly straightforward way of the Court testing what he was telling me about the court documents and not the fashion magazine having been in the envelope, and what the Defendant was telling me about what was in the envelope she received . The magazine which Mr Awosika weighed was identical to the one in the photograph which the Defendant had taken and previously provided to the Court.

Conclusion on service

22. In the circumstances, I am entirely satisfied that I can with complete confidence conclude that the Defendant was right when she told the Court in a statement of 26 April 2021, accompanied by a statement of truth and a photograph of the envelope and the fashion magazine, that the Claimant did not serve her with the application (that was what his certificate of service to the Court had recorded), nor the documents relating to the application; what he did was to send an envelope containing a fashion magazine and use the proof of posting to convince a Judge that he had sent the papers. I am entirely satisfied that the Claimant's witness statement of 30 April 2021 was materially misleading when it stated, accompanied by a statement of truth, that "the application was served by Royal Mail guaranteed next day delivery service on 20 April 2021 (supporting documents enclosed)"; he was being materially misleading when he produced a signed certificate of service – accompanied by a statement of truth – stating that the application had been served by first class post (next day delivery) on 20 April 2021; he was also being materially misleading when he filed a further witness statement – signed and accompanied by a statement of truth – pursuant to the directions of Hilliard J for the hearing before me, stating: "the application was served by Royal Mail

guaranteed next day delivery service on 20 April 2021". I cannot believe a word of it. I am entirely satisfied that what happened was this. The Claimant sent a non-specific text referring to proceedings and 48 hour notice. He said nothing to the Defendant's solicitors, although he knew that she had solicitors, and he knew he had received a letter from those solicitors as recently as 31 March 2021 (a letter which he himself produced with his witness statement of 30 April 2021, in an attempt to show that he was only being accused of wrongly letting the House and not of breaching the restraining order). He had no good reason for not notifying the Defendant's solicitors; nor for failing to tell the Court that he was aware that the Defendant had solicitors. He told me at the hearing yesterday that the reason he didn't notify the solicitors was that they had "been rude to him" and he knew they "would be unhelpful to him" and he "didn't think of doing that". What the Claimant was able to do was to present to this Court what appeared to be cogent contemporaneous evidence that he had served papers by post, as a consequence of which this Court concluded that, on the face of it, the Defendant was on notice and had chosen not to participate. However, as this Court always does, the order for interim relief included a 'liberty to apply to discharge'. This case illustrates just how important that protection is. But in the meantime, the Claimant had been able to secure a High Court order, armed with which he had been able to return to the House, get into the House and change the locks, with the perfect 'shield' of a Judge's order in his hands. More than that, the Claimant persuaded the Judge to restore the Occupation Order, which BFC had made on 15 March 2019 for a 3 month period and which had expired on 14 June 2019. That meant – leaving aside questions of jurisdiction, with which mercifully I do not need to grapple – the Claimant now had a court order which resurrected a right to be present in the House.

Implications

23. The Courts rely, and need to be able to rely, on the accuracy and truthfulness of what they are told – accompanied by a statement of truth – by those who apply to the Court, especially on an urgent basis. The duty of candour and truthfulness applies to an applicant who is a litigant in person with no less rigour than it applies to legally represented clients and those who represent them. It is extremely serious when it comes to light that false and untruthful statements have been made to a Court, as a result of which orders have been made, especially mandatory orders, and especially orders made in highly-charged circumstances. I have no doubt that, given the extreme seriousness of the clearly demonstrated material misstatements in this case, it would be appropriate to discharge the three mandatory orders made by Martin Spencer J on 23 April 2021, without reference to the underlying substance of the position put forward by the parties.

'Sleeping in my car'

24. Having said that, the second prong of the application to discharge the three mandatory orders is also important, and it is appropriate that I should deal with it. At the hearing yesterday, the Claimant insisted that he had used his late stepfather's Avondale Rise address as an alternative to the House, not because he was ever living there, but in order to divert mail from the clutches of the Defendant and their daughter. He told me that the gas work record of 31 March 2021, at the Algernon Road property of a friend, had needed an address and he had given Avondale Rise knowing that nothing would need to be sent there. He told me that, notwithstanding Southwark LBC's letter to him at Avondale Rise on 3 March 2021, that property was "nothing to do with me"; "it would have to go back to the people at Southwark; I'm not quite sure when, any time, we are

waiting"; "I don't have a key no more". He later told me: "somebody is staying there"; "it is my brother's son"; "he moved in 5 or 6 weeks ago"; "my brother arranged it". The Claimant gave me a detailed description of where he had stayed in the time between 9 April 2021 (the altercation involving the police when he had left the House and the locks had been changed) and 23 April 2021 (moving back in, armed with the Court order). He told me that he stayed at first in his car and was homeless. He said he then had a road traffic accident, which was on 12 April 2021. This is corroborated by the hospital attendance record that day. He told me that on the evening of the road traffic accident day he went to a friend's house in Kent where he stayed for about a week, before going to his niece in north-west London. Because 12 April 2021, the date of the road traffic accident is distinctive and evidenced, and features clearly in that narrative, he was clearly telling me that he was staying with friends from the evening of 12 April 2021 for about a week, and then with his niece in north-west London from about 19 April 2021 to 23 April 2021.

25. There is a very serious problem with this. On 19 April 2021, for a hearing that day before Martin Spencer J, the Claimant put forward a witness statement dated 16 April 2021, accompanied by a statement of truth . That statement of 16 April 2021 stated: "Since the 9 April 2021, I have been sleeping in my car. I have returned to the Police station on several occasions, without any success. This is physically demanding on my body, as I am disabled, I have got arthritis in my joints". The witness statement went on to describe the car accident on 12 April 2021 and referred to the hospital report. The clear picture was of a 65 year old man, forced to live in his car, notwithstanding his disabilities, and notwithstanding injuries sustained on 12 April 2021. Then for the hearing on 23 April 2021, at which the mandatory orders were made by Martin Spencer J, the Claimant produced a further witness statement signed, and accompanied by a statement of truth, dated 23 April 2021. It said this: "My current circumstance is homeless, and have been sleeping in my car. It would be most appreciated if the Court, issued an Order that would end this situation as it relates to my homelessness". The Judge was clearly moved by that evidence and recorded in the Order the recital that the Claimant asserting street homelessness and that he had been sleeping in his car. I am entirely satisfied, on the basis of the Claimant's own free-flowing narrative at the hearing before me, that the contents of two witness statements were materially misleading, communicating as they did to the Court that the Claimant was <u>still</u> being forced to sleep in his car. This point goes to the substance of the balance of convenience and justice and I have no doubt it was material to the Judge's evaluative conclusion.

26. I add that I found the Claimant's description of the position in relation to Avondale Rise utterly unconvincing. It is clear that the council property which his late stepfather had occupied had not yet, and has not yet, returned to the council. As recently as 3 March 2021 the council was writing to the Claimant, addressed to that very property, asking the Claimant to "kindly advise… on what you are intending to do in relation to the property". I was given no convincing explanation of why the Claimant does not now have a key. It is obvious that that property has been being used by the family. As recently as 31 March 2021 the Claimant was giving that property as his address, as he had done on the death certificate in December 2020. The explanation about when the property would have to go back to Southwark was vague and evasive.

27. I am making no finding of fact as to whether the Claimant had to sleep in his car for the first 3 nights – as he told me yesterday – and which Mr Awosika for the Defendant does

not accept. But I am quite satisfied that I can with complete confidence find that he was not still sleeping in his car on and after the night of 12 April 2021, from 3 days after the altercation with the police, and 7 days before he made his application to this Court for urgent interim relief. This, in my judgment strongly reinforces the conclusion that the just and appropriate course – having regard to the interests of justice and the overriding objective – is the discharge of the 3 mandatory orders. It also provides the answer to the application, looking at the substance of the matter and not simply the question of service of documents.

Further non-disclosure?

28. In those circumstances, it is not necessary to consider whether there was, in any event, a material non-disclosure in the Claimant not having made the Court aware that the Defendant is the sole owner of the freehold of the House; and that there had been recent correspondence (31 March 2021) from solicitors acting for the Defendant in relation to the House. Martin Spencer J, at least in the papers filed and the recitals to his Order, was not told about either of those things.

Bromley Family Court

29. The applications to this Court have taken place, involving three QBD Judges and five hearings (including the delivery of judgment this afternoon), all alongside parallel proceedings in the BFC, where previous order were made. These points are worth emphasising.

30. First, the Claimant told me: "I want the House to be sold". There is, as I have explained, a final hearing due to take place on 14 June 2021 at BFC. That hearing, before the appropriate court, will be able to deal with all issues relating to finances and property, arising out of the divorce between the parties. That will include any questions relating to the House. It will be open to the Claimant to make any arguments to that court, and to make any applications to that court, that may be appropriate in the context of post-divorce resolution of issues relating to finance and property. It follows that the means of resolution of all and any issues between the parties is imminently nearing arrival. It is to the BFC that the Claimant must now look for the due consideration of any issues which he wishes to raise, and for the protection of such legitimate interest as he has. The imminence of the 14 June 2021 hearing would have been a highly material factor had it been necessary or appropriate to consider in any more detail the substance of interim relief.

31. Secondly, in the circumstances it has not been necessary for me to address whether this application for interim relief, all along, ought to have been issued in the BFC. There are good reasons to think it should have been. Nothing which I have been shown or told indicates that the BFC would have lacked the jurisdiction to deal with an urgent application as to whether the Claimant should be being permitted to remain in the House, as he had been pursuant to the previous – expired – occupation order. Nothing in this judgment should be taken as adopting any view, or making any assumption, that this Court was the correct Court for the Claimant's urgent application.

32. Thirdly, what is obvious is that Martin Spencer J was acutely aware of BFC as the appropriate primary forum. The Claimant is in person and the Judge – in the circumstances – was deprived of the assistance which the Defendant's solicitors could

have provided. But alongside the three mandatory orders (1)-(3) which he made, were orders (4) and (5) designed to require the Claimant to restore before the BFC issues which belong in that court, as a consequence of which this Court's order was to cease to have effect.

33. Fourthly, whether this Court has – and if so, in principle, should exercise – jurisdiction to make an order for an BFC occupation order which lapsed in June 2019 to be "restored in like terms pending further application in the said matter" is not something with which I need grapple, since I am discharging that and the other mandatory orders in any event.

34. Fifthly, nor do I need to address the question of transfer to the BFC. There is now nothing from these proceedings to transfer. This case, in this Court, never reached the stage of a substantive claim being filed. Nor, then, do I need to deal with what the Claimant's underlying cause of action was or would have been in this Court. Again, nothing in this judgment should be taken as adopting any view, or making any assumption, that this matter would have stayed in this Court. As I have explained, paragraph (4) and (5) of the Order were designed to put the matter before the BFC.

Outcome

35. Martin Spencer J made his mandatory orders, satisfied by what he had been told on the face of it – as any Judge would have been – but recognising the importance of liberty to apply to discharge the Order. The outcome in this case, in the circumstances of the case, demonstrate just how important that recourse is, which he spelled out for the Defendant. Pursuant to the protective recourse for which the Judge provided, I discharge the mandatory orders (1)-(3). In the circumstances, I will also discharge paragraphs (4) and (5), which fall away. Paragraph (6) has been utilised and is spent. Paragraph (7) is historic and spent.

Contempt

36. As to the question of contempt of court, a matter raised in the Defendant's application, a false statement in a document verified by a statement of truth can be a contempt of court (CPR 32.14(1)) but any application would need to be made in accordance with CPR 81.18 and the procedure under CPR 81.14, as Mr Awosika recognised.

Not a possession order

37. As Mr Awosika also recognised, the order which the Defendant seeks from this Court – and which I make – discharges the mandatory orders (1)-(3) of Martin Spencer J. Those orders no longer apply to give any entitlement to the Claimant or impose any obligation on the Defendant. The BFC's expired occupation order is no longer "restored" and no occupation order is in force. I have found that the Claimant materially misled this Court in obtaining the Court Order which was his judicial 'shield', when he re-entered the House and re-occupied it on 23 April 2021. That Order is now discharged and the 'shield' exists no more. No order of this Court provides any justification in law for his remaining there. But, as Mr Awosika recognises, if an insofar as Claimant remains in occupation, there are legal rules, mechanisms and judicial forums concerning possession orders. The Defendant's application to this Court, and the draft order submitted with it, did not seek any order for possession. Nothing I have said is intended to stand as any encouragement, or discouragement, to anyone.

Costs

38. Finally, I will deal with the question of costs, which Martin Spencer J reserved by paragraph (8) of the order of 23 April 2021. I am quite satisfied in all the circumstances that it is appropriate for the Defendant to have her costs, summarily assessed, and on an indemnity basis. I will order that the claimant pay the defendant's costs of these proceedings assessed at £9,697.50.

5.5.21