Case No: D4PP0652

Neutral Citation Number: [2021] EWHC 2442 (QB)

IN THE COUNTY COURT AT BIRMINGHAM

Civil Justice Centre,
The Priory Courts,
33 Bull Street,
Birmingham, B4 6DS

Date of hearing: Thursday, 22 July 2021

Before:

MRS JUSTICE TIPPLES

Between:

PARATUS AMC LIMITED — **Claimant**

- and -

(1) MR FLOYD WILSON
(2) MRS SHARON WILSON — **Defendants**

- -

- -

Miss Emily Betts appeared on behalf of the **Claimant**
The **Defendants** did not appear and were not represented

- -

JUDGMENT
(approved)
(Hearing conducted via MS Teams)

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MRS JUSTICE TIPPLES:

1. This is an application by the claimant, Paratus AMC Limited, to extend for a further period of two years two extended civil restraint orders made by Pepperall J on 8 July 2019. The first ECRO was made against Mr Floyd Wilson, the first defendant, and the second ECRO was made against Mrs Sharon Wilson, the second defendant, who I am informed is Mr Wilson's mother. The defendants both live at the same address at 16 Wandle Road, Beddington, Croydon and are the defendants to this action.

2. The claimant's application is made by application notice dated 15 June 2021, which requested on its face that the application be heard before the existing ECROs expired on 7 July 2021. Unfortunately, that was not possible and the matter has come before me today.

3. The application notice identified that the application is made pursuant to para.3.10 of Practice Direction 3C and asks that the ECROs be extended for a further period of two years because, and I quote here from s.3 of the application notice:

> "Since the Restraint Orders were made the Defendants have made numerous further vexatious and unmerited court applications against the Claimant which have all been unsuccessful, including an application for permission to appeal to the Court of Appeal, which was refused on 27 April 2021.
>
> There is a real risk that the Defendants will issue further unmerited claims and applications against the Claimant unless the Restraint Orders are extended when the current Restraint Orders expire on 7 July 2021. The Claimant is entitled to finality in the litigation."

The application is supported by the fifth witness statement of Tara Davies dated 15 June 2021 and exhibit TD5.

4. The application was served by post and email on the defendants in June. The claimant has also prepared an electronic bundle for the hearing which contains evidence of service and also includes documents in relation to events which have happened since the application was issued.

5. In readiness for the hearing, Miss Betts, counsel for the claimant, prepared a detailed skeleton argument which was served on the defendants. Mr Wilson, the first defendant, has also served a skeleton argument and in paragraph 2 he says this:

> "The First Respondent shall rely on this skeleton argument at the hearing and inform the court to continue in his absence as provided under Part 23.11(1)."

However, as this skeleton argument was not also signed by the second defendant, Mrs Wilson, at the start of the hearing this morning, which took place remotely, we

waited five minutes to give the second defendant an opportunity to participate if she wished to do so. The second defendant did not log on and as the court did not receive any communication that she was having any difficulties in doing so this hearing proceeded in the absence of both defendants.

6. At the hearing Miss Betts, conscious of her professional obligations that the defendants were not present or represented, took the court carefully through the background to this application, the relevant documentation and her skeleton argument. She also addressed the points made by the first defendant in his skeleton argument and identified points that could potentially be made by the defendants in their favour, principally the second defendant, together with her client's answer to those points. Her approach was clear and thorough and of an assistance to the court.

7. Turning first to the relevant law. Paragraph 3.10 of Practice Direction 3C provides that:

> "The court may extend the duration of an extended CRO if it considers it appropriate to do so, but it must not be extended for a period greater than two years on any given occasion."

Miss Betts summarised the relevant legal principles as to what "appropriate" means in these circumstances at paragraphs 17 to 19 of her skeleton argument and she referred in particular to two cases. First, *Noel v The Society of Lloyd's* [2010] EWHC 360 (QB) at para.10, a decision of Eady J and, second, *Chief Constable of Avon and Somerset v Gray* [2019] EWCA Civ 1675 at para.14 to 15. These principles are also dealt with at para.3.11.7 at p.184 of the 2021 **White Book**.

8. It seems to me that as a result of the decision in *Gray* it is clear that the test as to whether it is appropriate to extend an ECRO for a further period, and, if so, for how long, must be read in the light of the criteria for granting the ECRO in the first place as the restrictions on the party's right to bring litigation is the same during the original term of the ECRO as during its extension. The question the court has to consider is whether it is necessary in order to (a) protect a litigant from vexatious proceedings against them and/or (b) to protect the finite resources of the court from vexatious waste. Therefore, on an application such as this the court needs to consider, amongst other things, the background to the application, the degree of persistence prior to the original order and the conduct of the person after the order was made.

9. The point of law raised by the first defendant in his skeleton argument is this. He maintains that the court should dismiss the claimant's application because the ECROs have now expired and this court has no jurisdiction to extend them. That point was specifically considered by Birss J in called *Ghassemine v Chatsworth Court Freehold Company Limited & Ors* [2019] EWHC 3646 (Ch). That decision is set out at p.185 of the **White Book** and the notes in the **White Book** record this:

> "In *Ghassemine* it was held that there was no fetter on the court's jurisdiction to grant an extension of an ECRO after it had expired, although the fact of the expiry was a relevant factor to be considered. If an extension

> was granted the two year period would run from the date of expiry of the original order or its last extension, not from the date of the current hearing."

Therefore, as I have said, Birss J considered the point specifically raised by the first defendant here and rejected it. It seems to me that is the answer to the point the first defendant has raised and there is nothing in the argument he has raised in his skeleton argument.

10. In terms of the fact this hearing is taking place after the expiry of the ECROs, in the circumstances of this case it is something which I have considered, but it seems to me it is not a material consideration. The application was issued by the claimant in good time before the expiry of the ECROS but, unfortunately, due to pressures on court time it was not possible for the matter to be listed before 8 July 2020 and it is in those circumstances it has come before the court today on 22 July 2020. So that point does not take the first defendant anywhere in response to this application.

11. I now turn to the facts of this case. These proceedings started as mortgage possession proceedings brought by the claimant as mortgagee against the defendants as mortgagors in relation to a property known as 30 Beverley Road, West Bromwich, B71 2JT in reliance on a mortgage deed dated 26 May 2002 which created a first legal charge over the property. The possession claim was issued over ten years later on 15 May 2017, but adjourned generally by order of District Judge Rouine dated 5 June 2017 on the basis that the defendants were challenging the validity of the mortgage deed by way of separate Part 8 proceedings.

12. Throughout the mortgage possession proceedings and the Part 8 claim the defendants have advanced the same legal argument, namely, that because the mortgage deed and/or the mortgage offer was not signed by the claimant, the documents did not comply with the provisions of s.2 of the Law of Property (Miscellaneous Provisions) Act 1989. As a consequence of that the defendants argued that they did not owe the claimant any money at all. The Part 8 claim was dismissed on 13 February 2017 and the claimant obtained a possession order over the property on 21 June 2018, which was enforced on 29 March 2019.

13. On 8 July 2019, as I have already explained, this matter came before Pepperall J when he granted the ECROs against the defendants. In doing so the judge gave a detailed ruling, which I have in the electronic bundle before me. The judge in that case set out the background to the case and also the argument which I have just identified which the defendants have consistently maintained in response to the claimant's claim. Pepperall J explained why that argument was flawed and set that out at para.12 of his ruling. Pepperall J explained that he was satisfied that the defendants' central argument was flawed and gave his reasons in these terms and I quote here from his ruling:

> "12.1 Whether the offer letter would itself have been binding, monies were advanced and a mortgage deed was entered into.
>
> "12.2 As Ms Carmichael argues, Paratus did not sue upon the mortgage offer letter but upon the mortgage deed."

Pepperall J then considered the materials before him and granted the ECROs against the defendant.

14. His judgment records a number of things. Firstly, that by 5 October 2018 there have been five matters on which judges had dismissed applications or claims made by the defendants and identified that they were totally without merit. Next, that a limited civil restraint order had been made against the defendants by His Honour Judge Mithani on 5 October 2018. Following that hearing there had been five further findings that applications made in the proceedings were totally without merit and, in addition to that, there have been two further applications which have been certified as totally without merit in the Part 8 claim.

15. In that context Pepperall J made the following findings: Namely, that the defendants had persistently issued claims or made applications which were totally without merit. History had shown that limited civil restraint orders alone had not been effective in controlling the defendants' behaviour. The limited civil restraint order had not been effective in preventing, nor could it be, the defendants from ventilating similar complaints in another forum. In addition to that, there was evidence before the judge that allegations of fraud had been made without any apparently proper foundation against the claimant's solicitor.

16. The judge therefore concluded that there was a real risk that if extended civil restraint orders were not made in this case the defendants would simply seek to commence yet further proceedings, either in the High Court or the County Court, in connection with the subject matter of these proceedings, namely, the enforceability of the legal charge over the defendants' property.

17. In the ECROs made by Pepperall J the judge identified that if the defendants wished to issue any other claims or applications then they had to get permission from His Honour Judge Worster or, if that judge was unavailable, Her Honour Judge Truman.

18. I now turn to what has happened since the ECROs were made. Since 8 July 2019 the defendants have made six further applications seeking permission from the Court to proceed against the claimant, and all of those applications have been unsuccessful. The details of those applications are summarised in Tara Davies' witness statement, but it is important that I identify what has happened. First of all, by an appellant's notice dated 16 September 2019 the defendants sought to appeal the decision of Pepperall J not to adjourn the hearing on 8 July 2019. The Court of Appeal refused permission to appeal on paper and refused an extension of time and that order was made by Lewison LJ on 13 February 2020 and a copy of that appears in my bundle.

19. Second, by an application notice dated 1 November 2019 the first defendant sought permission from His Honour Judge Worster to make an application to set aside the warrant of possession of the property on the grounds of abuse of process. Judge Worster refused permission on paper on 3 January 2020; again, that order is in my papers.

20. Third, by an application notice dated 26 February 2020 the defendants made an application for permission to make further applications in proceedings. That was also

refused by Judge Worster on paper on 11 September 2020 and the order made by Judge Worster explained that the essential basis for the defendants' arguments on these applications is flawed.

21. Fourth, by an application notice dated 4 March 2020 the defendants made an application for permission to request an order for an interim injunction against the claimant to prevent any sale or marketing of the property until the proceedings were fully concluded. That application was also refused by Judge Worster on paper on 11 September 2020 and, again, as with all of these applications which have been made since 8 July 2019, I have copies of the orders made and the applications made by the defendants in the papers before me.

22. Fifth, by an application notice dated 26 June 2020 the defendants made an application for permission to make further applications in the proceedings. That was refused by Judge Worster on paper on 1 October 2020 and, again, Judge Worster identified in his brief reasons, "The defendants misunderstand the legal position."

23. Sixth, by an appellant's notice filed on 29 September 2020 the defendants sought to appeal Judge Worster's decision on 11 September 2002 to the Court of Appeal. The Court of Appeal refused permission to appeal and that decision was made by Coulson LJ on 27 April 2021. In his reasons Coulson LJ sets out the background to the matter briefly and also why the defendants are wrong in law and agrees with what Pepperall J had said in his judgment on 8 July 2019 and said that he was, "Entirely satisfied that the so-called new argument is exactly the same as the old argument which was rejected by Pepperall J."

24. It is clear from that narrative that in relation to the six applications that the defendants have issued since 8 July 2019 when the original ECROs were made against them all raise the same legal arguments. None of those applications have been successful but, as is clear from the narrative I have just explained, they have taken up considerable court time, both before the Circuit Judge and also before the Court of Appeal.

25. Tara Davies' witness statement also summarises the recent correspondence from the defendants to various people, including the claimant's solicitors and the court. That is summarised at para.23 to 30 of her witness statement where she explains that the defendants have sent correspondence to her firm and the court, including threats to issue civil proceedings, written complaints against the claimant and the claimant's solicitors, threats to issue professional negligence proceedings against the claimant's solicitors, threatened injunctions against the claimant's agents, threatened claims against the courts and threats to issue a private prosecution against the claimant and also against the claimant's solicitor for fraud. These are allegations which do not appear to have any foundation and, as I say, they are summarised in Miss Davies' witness statement.

26. Finally, I should also add that since the application has been issued by the claimant and after the expiry of the ECROs, on 16 July 2021 the first defendant issued a claim in the Chancery Division against the Chief Land Registrar, which is based on the same issues in relation to the alleged invalidity of the mortgage deed. The claim form is expressed in these terms:

> "This is a Part 8 claim that concerns a mortgage of land and therefore brought in the High Court Chancery in accordance with chapter 9 of the Chancery Guide February 2016.
>
> "The Claimant seeks an order that affirms the Defendant is liable to Indemnify the Claimant by reason of a mistake whose correction would involve rectification of the register as prescribed for by schedule 8, section 1(b) of the Land Registration Act 2002."

Attached to that is a document entitled "Details of Claim" and then is set out the nature of the claim which all stretches back to the same issues in relation to the first defendant's contention as to invalidity of the mortgage deed.

27. It is against that background I have to consider whether it is appropriate to extend the ECROs. I need to consider the first and second defendants in turn.

28. I am quite satisfied that it is appropriate to do so in the case of the first defendant, Mr Wilson. I am also satisfied in respect of the second defendant, Mrs Wilson, although, as Miss Betts fairly accepted for the claimant, the second defendant has not been a party to all the applications and it appears that it is the first defendant who is behind the applications or claims and is the driving force. In these circumstances, however, it is quite clear to me on the evidence that, if an ECRO is not also made against the second defendant, then the first defendant will use her name to commence further proceedings or issue applications and that will undermine the purpose and effect of extending the ECRO against him for a further period.

29. In those circumstances it seems to me it is entirely appropriate that ECROs should be extended against both defendants.

30. As to why it is appropriate for the ECROs to be extended, it is quite clear to me that it is necessary to do so in this case. First of all, this application is made against a background from which it is clear that these defendants have repeatedly sought to relitigate the same issue which has been decided against them and they seek to do so based on the same flawed legal argument. However it is dressed up, the point still goes back to the issue maintained by the defendants namely, that this mortgage deed is void and, as has been set out by Circuit Judges, High Court Judges and a Judge of the Court of Appeal, that argument is wrong and flawed.

31. Further, this is a case where there has been a high degree of persistence prior to the grant of the original ECROs. There were in fact twelve applications in these proceedings and also the Part 8 claim which have been certified totally without merit.

32. Then turning to consider the defendants' conduct after the ECROs were made, it is clear that the defendants' appetite for issuing claims or applications remains undimmed. They have made a number of applications to reopen matters that have been decided against them and those applications include the six applications which I have explained which have been issued after 8 July 2019. On top of that I take into account the evidence set out in Miss Davies' witness statement in relation to the serious allegations, such as fraud, which are levelled against the claimant and the claimant's solicitor, again which

all appear to stem from the same allegations in relation to the validity of the mortgage deed.

33. In those circumstances I am quite satisfied that without a ECRO in place the defendants will persist in issuing claims and proceedings which are totally without merit and, indeed, the proof is in the pudding because, following the expiry of the ECROs, a claim form has indeed been issued, this time against the Land Registry, again stemming from the same unfounded allegations about the validity of the mortgage deed.

34. It is therefore clear to me that if the ECROs are not extended there is a real risk that the defendants will issue further proceedings or applications which are without merit against the claimant, the claimant's solicitors or indeed other parties. That will lead to time consuming litigation where the defendants will not have any prospect of success but the claimants will be put in a position of having to defend them and deal with claims which come their way. That is not fair to the claimant in terms of having finality in litigation where the claimant has been successful.

35. On top of that, it is not fair on other litigants in that the court resources should not be devoted to dealing with applications of this nature which are hopeless and without merit and it is necessary to protect those valuable and limited resources from being spent on such matters.

36. Therefore, in those circumstances it seems to me it is entirely appropriate to extend the ECROs.

37. The next issue is for how long they should be extended. Given the extensive background and history to this matter and the concerns which I have set out in this judgment as to why it is necessary to continue the ECROs, it seems to me it is also entirely appropriate to extend them for a period of two years in each case against both the first and second defendant.

(Hearing continues)

This Judgment has been approved by the Judge.