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IN THE LINCOLN COUNTY COURT No. F00LN484

Tuesday, 5 January 2021

Before:

HIS HONOUR JUDGE ROGERS

B E T W E E N :

THOMAS EDWARD GREETHAM Claimant

- and -

ANDREW CHARLES GREETHAM Defendant

MR J. STUART (instructed by Adie Pepperdine Ltd) appeared on behalf of the Claimant.

DR S. JOSEPH (instructed on Direct Access basis) appeared on behalf of the Defendant.

J U D G M E N T

(Approved)

JUDGE ROGERS:

1 Today is listed for the second half of a committal application brought in the most unhappy, acrimonious and now grotesquely elongated proceedings between father and son. It is one of the most distressing cases with which I have had to deal. On the last occasion before Christmas, I determined which matters of fact alleged to be allegations of contempt of court were proved. As it happens, helpfully, substantial admissions were made and the outstanding controversial points were not proceeded with. Therefore, the penalty aspect proceeds only on those admissions of contempt made by Mr Greetham at the last hearing. They are set out in full in the order.

2 On that occasion, I adjourned the question of penalty for really one substantial reason. At that stage an elderly member of his family was, I am very sorry to say, in the last stages of her terminal illness and it would have been cruel, in my judgment, to contemplate significant penalties at that stage. The sad, perhaps inevitable, but nevertheless tragic fact is that that elderly lady has now died, as I am afraid to say was predictable. There was a suggestion also that Mr Greetham and members of his family perhaps were Covid symptomatic. That appears to have come to nothing, I am very pleased to say and that has not been revived today.

3 In adjourning the proceedings as result of that extraneous factor, I made it plain and it is there for all to read on the face of the order, that compliance with the outstanding matters of responsibility would go a very long way to assuring the court that a penalty commensurate with a willingness to adhere to the order and to settle the outstanding liabilities would be contemplated. The evidence that I have, which I do not understand to be contradicted, is that not a single step towards compliance has in the meantime been taken. No financial payment has been made nor has any practical step been taken to vacate the property or land, move the animals or deal with the outstanding partnership matters. Therefore, the matter comes before me today.

4 The first thing I have to consider is the application now made by Dr Joseph on behalf of Mr Greetham further to adjourn the proceedings, obviously on entirely different grounds today. She takes three points. The first is procedural. She says that there is an outstanding appeal or application which needs to be determined before this case should proceed. Secondly, she says that there have been substantial financial changes of circumstances so

that, at least in part, compliance can be fulfilled and, even at this late hour, Mr Greetham should be given that opportunity. And, thirdly, she says in the current state of the country in terms of the pandemic, on the day upon which the whole country moves into even tighter restrictions, that it would not only be cruel and unfair to her client, but effectively would be in breach of Government regulations ordering people to stay at home. She says that to make an order which perhaps would involve committal to prison in those circumstances would be wholly unjustified and, even if it were, it should be deferred until the position in terms of current restrictions are substantially lifted and the risks from this wicked disease are at least lessened.

5 Normally an application for an adjournment can be dealt with quite quickly and summarily, but it is important that I engage with the issues. It is not necessary, however, to give a background because I think I have already delivered four substantive judgments in this case, possibly more, and the matter has already been considered twice substantively by judges of the Queen's Bench Division and we have their orders and/or transcripts in addition. The simple chronology, which is all that is necessary for today, is as follows. This case in the County Court is for a dissolution of a partnership. The partners are the son and the father. It is inextricably linked with the divorce proceedings between Andrew Greetham and his former wife, and it was necessary to determine the partnership shares and the available funds before making a financial remedy order.

6 The matter was dealt with nearly a year ago now. The background chronology is such that the substantive farming or partnership dispute came on before me in February 2020. On the Friday immediately preceding the fixture on the Monday, an informal application was made to vacate the trial. That was refused by me over the telephone. At that stage, for the first time, the question of litigation capacity was raised on the part of Mr Greetham. It is noteworthy that up until a few days before then he had been acting as a wholly capacitous litigant instructing solicitors and counsel in the preparatory phase of the litigation, including attending a mediation which was unsuccessful. I was satisfied that he had some ill-health and some mental vulnerability but I was not satisfied that, first of all, he was incapacitous in the terms of the Mental Capacity Act nor that that justified adjournment of the proceedings, so they were called on and determined on 20 February and the order I made and judgment delivered are there for all to be seen. He did not attend that hearing. I reconsidered in the course of the judgment, it is plain, the reasons for his non-attendance and I re-exercised my discretion whether to adjourn or to proceed and I decided to proceed.

7 There was a concession on the face of the pleadings that this was a 50-50 partnership, a concession that I fear may now be resiled from. But, in any event, the only question, therefore was the fair distribution. I decided that upon the application of the claimant, the son Thomas, that a proportionate and practical way of proceeding would be, where possible, to preserve the assets of the partnership *in specie* rather than simply liquidate everything and divide the funds. And, in a detailed schedule, I did just that and the net result was that Thomas received the principal farmhouse in the partnership.

8 The absence of Mr Andrew Greetham at the hearing obviously meant, since he did not give evidence and had filed no written evidence as I recall, it was very difficult to deal with the matter in a practical way so far as he was concerned. But I took full account of his case and, as I remarked in the judgment, the skeleton argument filed by Mr Stuart, who had perhaps anticipated that there would be no opposition from the other side, was fair and balanced and set out the options available to the court from a complete liquidation and division of funds through to an *in specie* division, and the latter I accepted. What of course I did , as well as making *in specie* distribution, was to direct an account to be undertaken by a district judge at the end of the process so that, on a balance sheet exercise basis, each party would end up with assets or resources equal to each other as representative of the 50 per cent share.

9 That order, which I hoped would be complied with in terms of the practical division, was not. The next thing that happened procedurally was an application was made to set aside the judgment on the basis that Mr Greetham had not attended. That was entirely open to him in line with the rules and that application I think came before me on 5 March. On that occasion he was represented by counsel, not Dr Joseph who now represents him, and I heard the application, including an application for relief from sanctions, in respect of which it is not necessary to go into in detail because I declined to set aside the order. I was satisfied then, as I was previously, on the issue of litigation and other capacity domains.

10 That should have been the end of the matter. What then happened was that an application was made to a judge of the Queen's Bench Division, Spencer J, which turned out to be wholly misconceived and described by the judge as an abuse of process in that it sought to challenge the wrong order altogether. But in the judgment we have seen, his Lordship expressed some doubt as to the overall merit. But, in any event, the upshot of that was that there was no extant appellate process underway. That did not deter Mr Greetham. At the

same time that application was being made to me for enforcement of the order in one form, which was the attachment of a penal notice, attempts were made to avoid the consequences of the order. In the meantime, nothing was happening on the ground.

11 The matter eventually came before another judge of the Queen's Bench Division, Foster J, who, on 8 October dealt with several applications. The first, it seems to me, was for an extension of time in which to seek permission to appeal against my original orders and a stay of proceedings. Her Ladyship had all of the appeal papers before her and so set about determining not only the narrow procedural matters but also the substance on the merits. And the order that she made, which is in the bundle, is to be seen. It is that of 9 October. Notwithstanding Mr Stuart's reservations, I am satisfied that it was an order made by her Ladyship on paper and, as should be absolutely second nature to a civil practitioner, an order made in that way is open to oral reconsideration if application is promptly made. The rules state seven days; no doubt extensions can be sought in appropriate cases.

12 Nothing was done about her Ladyship's order, as far as I can see, for many, many weeks. That the matter was live was clearly known about because I had just made an order in September and then the committal proceedings were instituted and I dealt with the matter, as I have said, in December. What seems to me entirely curious is how, notwithstanding the apparent engagement of myself and two judges of the Queen's Bench Division, the essence of what is now said is that there is an underlying challenge to the entirety of the process and the entirety of my decision-making, notwithstanding it has already been reviewed twice and permission to appeal has been refused.

13 In the hearing of 3 December, again the issue of litigation capacity was raised and, as has always been asserted, it is argued that it would have been preferable for Andrew Greetham's brother, Richard, to be his litigation friend. I am very concerned that the terminology throughout has been used loosely and not in its proper technical sense, because a litigation friend only comes into play when one is required to step into the shoes of the litigant if that litigant is incapacitous. Any litigant may have informal support, whether in court or outside, but the role of the litigation friend, as laid down by the rules and in the authorities, is a very particular and important one and it is not simply a case of either Andrew saying, "I want Richard to be my litigation friend" or Richard saying, "I want to be the litigation friend." Both the legal and procedural requirements have to be met and hitherto they have, in my judgment, never been met. I am well aware that Mr Richard Greetham has taken a proactive

and I am sure helpful role in trying to move the matter forward sensibly on behalf of his brother, but he has not been in a position to control the litigation nor, less, to make the key substantive decisions which are required. Because I am so perturbed by how this occurred, I well remember, and Dr Joseph in her skeleton makes specific reference to it, asking in terms when she gave me absolutely categorical assurance that concessions and admissions of breach were being made, that they were being made on instructions and that she did not regard her client as lacking in capacity. And she assured me that the instructions had been given and taken on the basis of a litigant/counsel relationship in the normal way and that it was not asserted that he lacked capacity. Had it been, of course, her professional position would have been wholly untenable, but she has never submitted that it is.

14 I then adjourned that matter on the basis of the admissions, as I said at the beginning of this judgment. What has happened since procedurally is, to my mind, astonishing and, notwithstanding her tenacious pursuit of this, I am surprised that Dr Joseph is prepared to lend her professional name to a process that is so lacking in merit as to my mind to be wholly tactical and avoidant of the realities of this case. There was, apparently, at the end of last year lodged at the Court of Appeal an appellant's notice which seeks to challenge by way of a second appeal the decision of Foster J in October. The appellant's notice, which I have only seen in draft form, is therefore undated but plainly was conceived about 21 December or thereabouts. In it, it is plain in its terms, it is a normal appellant's notice to the Court of Appeal and the relevant passage reads: "What is the name of the judge whose decision you want to appeal?" "The Honourable Mrs Justice Foster DBE." "What is the date of the decision you wish to appeal against?" "8 October 2020."

15 There can be no doubt what was intended by that: it was an attempt to challenge the decision of her Ladyship by way of a second appeal. It further reads: "Have you lodged this notice with the court in time?" The tick is "Yes." That is plainly wrong. Any challenge to her order would have expired by about the end of October, but plainly this was the end of December.

16 It continues: "Is the decision you wish to appeal a previous appeal decision?" Tick "Yes." So, it was understood to be a second appeal, with all of the narrow restrictions that apply to such appeals. What struck me upon reading it and Mr Stuart has helpfully taken me to the rules and give me chapter and verse, which has confirmed my memory, is that there is no basis to challenge the refusal of permission. A second appeal is against a second substantive

order, not a refusal of permission. That concludes the appellate process and thus the appeal, it seems to me, unless I have misunderstood the rule wholly, is entirely misconceived.

17 There is a further problem and that is this. When the notice was sent to the Court of Appeal, either a member of the administrative staff or a member of staff having taken advice from a lord or lady justice, indicated, as again is axiomatic, that if there is a challenge to an order made on paper, as I'm satisfied it was, that is not a matter for the Court of Appeal; it is a matter for the first instance judge or a judge of the same tier. In other words, any challenge should have been by way of an application for an oral reconsideration hearing made within seven days. These are not obscure passages in the rules that are hardly ever considered. They are first principles and, indeed, interestingly of course, this was precisely what must have been in the minds of those at the earlier stages. Why it was an appeal lodged at the Court of Appeal I do not know and nor does Dr Joseph. I don't think she was part of this as a direct access counsel, but that is what has happened. There has been no application made for an oral reconsideration. Indeed, the matter has been seen by a judge of the Queen's Bench Division in circumstances that are wholly extraordinary. In the documents for today, reference was made to an urgent application being made to the applications judge, Andrew Baker J. So I enquired of the Queen's Bench office this morning and received this email, which I will read into the judgment since it is not elsewhere available. The following direction was provided by Andrew Baker J,

> "An email dated 31 December 2020 from Mr Andrew Greetham to the Queen's Bench Judges Listing Office has been referred to me together with an electronic bundle of documents submitted by Mr Greetham. The immediate request is for an urgent oral hearing to be listed for tomorrow, 5 January 2021." (In other words, he was looking at it yesterday.)
>
> "I can identify no basis for granting that request.
>
> (1) The papers are submitted relate to a purported appeal to the Court of Appeal against an order of Foster J DBE made on 8 October 2020 sitting in this court, the Queens Bench Division. Any such appeal would be a matter for the Court of Appeal, not for me.

> (2) The proposed appeal has, in any event, not been commenced so far as is evident from the papers that have been submitted. They contain only an undated, un-issued draft appellant's notice.
>
> (3) Although that draft appellant's notice acknowledges that an extension of time would be required for any appeal against Foster J's order, it provides no grounds for or basis for the possible grant of any such extension.
>
> (4) In any event, no attempt has been made to explain why an urgent hearing is now suddenly required during the Christmas vacation, even if there was some possibly meritorious application that the High Court might have jurisdiction to hear.
>
> I therefore refused the request for an immediate listing of an oral hearing."

18 That had not, I think, been communicated to either of the parties and so it came as something of a surprise, I suspect, when I revealed this by way of forwarding the email in advance of this hearing. What of course it does is to some extent take the carpet from under Dr Joseph's feet in that part of the application was dependent upon Baker J making an order which plainly he is not prepared to do. He was seeing it, quite rightly in my judgment, if I may respectfully say so, as a matter for the Court of Appeal in the way it was then drafted. There had been no application, as I say, for reconsideration. Had there been, he no doubt would have looked at it and considered it on its merits.

19 So, this case in terms of any appeal is in a wholly unsatisfactory position. There is an apparently extant appeal to the Court of Appeal that is wholly without merit and procedurally flawed and there is a potential further application that has not been issued and no explanation for the substantial delay has been given. I am not prepared in this case to assume that either of those routes will be fulfilled in a satisfactory way and it would be wholly wrong to adjourn the proceedings on that basis.

20 I am also - of course, it is not for me, it is for an appellate tribunal - satisfied that there are no reasonable prospects of success. Dr Joseph has tenaciously sought to say that I have wholly failed to engage with the issue of capacity. What she means is I have consistently

refused to accept her arguments on capacity, but I have undoubtedly engaged with them. And I say that not from hubris but from the fact that both Spencer J and Foster J have also considered that and Foster J has refused permission to appeal, including in relation to that.

21 The second ground that Dr Joseph would seek to pursue is that the distribution made is unfair, both in terms of quantum and in terms of discretionary exercise by subjecting some of the assets to *in specie* distribution. Again, that has already been determined by judges of the Queen's Bench Division. It seems to me a fatally flawed argument in any event, given that the distribution *in specie* was discretionary and that any financial anomalies are cleared up by the ultimate taking of an account.

22 She also says that it was unfair to proceed in his absence and to assign a particular property to Thomas, who was present, rather than assign Catlin's Farm to Andrew, who was not. If the argument were as simple as that there may be something in it but, of course, the financial ramifications of the distribution were not lost on me, including the necessity to find a significant lump sum to pay the outstanding liability to Mrs Greetham in the divorce proceedings and therefore, not only as a matter of discretion, but it seemed to me almost inevitably that Catlin's Farm would have to go in order to raise the necessary funds. So, although, as I say, it is not for me, it is for another tribunal if it ever got there, I am not satisfied that there is any meritorious argument in any event.

23 Therefore, on the basis of the appellate point, I refuse the application for an adjournment.

24 The second question is that the matter should be put off so that, in effect, the financial settlement contemplated can be put into effect and what Dr Joseph says is that there is now available £700,000 which is far short of the total amount that needs to be raised but would be a very good start in terms of good faith and would probably be sufficient for the court not to impose a penalty of any substance on her client. The two sums available are said to be £400,000 which could be raised by way of a loan against a property and £300,000 advanced by the brother, Richard. There is undoubtedly an "in principle" available loan of £400,000 but when one drills down into it and one looks at the exhibit 3 attached to the statement of Mr Greetham of 4 January, for the reasons that Mr Stuart quite rightly articulates, the Folk2Folk funding offer of £400,000 is nothing like what it seems to be. It is described as a loan of £400,000 secured on Catlin's Farm, Boston and land on the north-west side of Star Fen Road. Of course, the object is to retain Catlin's Farm so that might be realistic, but the

land on the north-west side of Star Fen Road is a separate piece of land specifically dealt with within the partnership dissolution proceedings which would need to be sold, plus, as Mr Stuart rightly reminds me, that land is itself already encumbered as to £90,000 worth of mortgage against a probable value of £100,000. Therefore, this loan is illusory and may not amount, even if it were available and even if there were proper security, which there probably is not, to more than £300,000 in reality.

25 In terms of the monies available from the brother, there is undoubtedly money standing in his account; I accept the evidence as shown in the exhibit. But today, just as on all other occasions, that is not an unconditional offer to make those funds available. In his witness statement, Mr Richard Greetham says,

> "Of the sum referred to above," (that is the full £700,000) "the £300,000 which I hold is conditional upon the defendant receiving a fair hearing in this matter and not being unduly prejudiced by a settlement which causes injury to him."

26 It is plain, and I have already articulated the substantial continuing challenge to the main order I made, that that money is not simply being advanced in part settlement of the liability; it is plainly conditional and is plainly put forward on terms that would only be acceptable to Mr Greetham and, I am sure, his brother. In short, it is not money that is actually available, save on precise terms which will not be accepted - and there is no reason why they should - by Mr Thomas Greetham. In other words, the purported availability of £700,000 is wholly illusory and, in those circumstances to adjourn would be a complete waste of time, escalation of costs and deferment of the key issue in this case.

27 I gave at one stage in this hearing a few moments of reflection time to see, even at the 11th hour as it is, whether the conditions would be removed and any sum would be deposited in the client account of the son's solicitor by the end of this week. No such realistic offer has been put forward. I accept Dr Joseph's points that to do it by Friday may be too much. Had I been told that within 10 days, for example, that sum could be made available, then that would have been something I would be plainly required to reconsider, but as the matter stands at the moment there is no substantial offer to settle this. Therefore, in my judgment, there is no significant change of circumstances.

28 The last point raised is that I should simply not proceed in the current pandemic given that the risk of a custodial sentence is there, which would involve not only in, as it were, rather prosaic terms, him moving house, but would involve a very substantial change in his home circumstances to his own detriment and that of his partner and those around him and there may even have been a further tragedy in the family this very day; the details are at present rather scant.

29 Of course, I have sympathy - who could not? - with the position of anyone in the current pandemic. This day we have moved into the most severe period of lockdown since last April. However, as is clear from the Government guidelines, the courts are continuing to operate. There is much documented evidence as to how the Crown Court has continued to operate and custodial sentences are routinely imposed by that court. Similarly, one reads on a daily basis on the public judiciary website of committal proceedings in the County Court or the Family Court where those found in contempt receive custodial sentences. Therefore, I see nothing in principle to prevent the court proceeding, even if it meant a custodial sentence was the end result. Drilling down into the regulations, Mr Stuart says that none of this is of any relevance in any event. All of the things could have been done and should have been done to regularise the position in terms of the property and the animals were permissible throughout under the Government regulations and remain permissible to this day, including moving house, which of course is one of the objectives in relation to Catlin's Farm.

30 The issue of the pandemic may become relevant in terms of a point of mitigation but in my judgment is wholly irrelevant or is of marginal relevance at best to the question of whether or not I should proceed. So, for all of the reasons articulated by Dr Joseph and all of the other points set out in the documentation which I have read, I refuse the application to adjourn these committal proceedings. I will therefore move on to the phase of punishment.

(Later)

31 These following sentencing remarks need to be read in the context of all of the other judgments that I have delivered in this case, which need not be repeated here. The very sad fact is that an order was made by me in February of last year in these partnership proceedings whereby the distribution of assets and funds was determined and I encouraged a

speedy resolution of the outstanding matters. The order set out in terms what was required of all of the parties. It was a complicated order; it is there to be seen.

32 Since that time, the claimant, Thomas, has sought to continue the farming business and has sought to resolve the matters. His father, Andrew, the defendant, I am quite satisfied has set his face against compliance, both in practical terms by doing precisely nothing, in fact in doing rather more than nothing in terms of continuing to farm and continuing to occupy premises that he should have left and also, in parallel, procedurally to seek at every turn to frustrate the proper implementation of the order and in previous judgments, including that which I delivered earlier today, I deal quite fully with those.

33 Out of desperation the son sought to attach a penal notice to various terms of the original order as a result of non-compliance. That was done and specific items were set out and they are to be seen in the order of 25 September. Again, that produced no significant result and that led ultimately to the application for committal which is before me today. It was undoubtedly a last resort for Thomas and his advisers and it is a matter of great regret to the court that it should come to this. This should have been, though somewhat complex, a straightforward business-like resolution not only of the matrimonial difficulties but of the partnership difficulties. It has become an enormously acrimonious, bitter and prolonged stand-off, effectively.

34 At the last hearing on 3 December, I dealt with the element of factual dispute, such as it was, in order to satisfy me on the criminal standard that I was sure that there had been the relevant breaches which would give rise to a finding of contempt of court and a penalty. I was greatly assisted by the concessions that were made and I give substantial credit for those concessions by way of mitigation. The order which deals with it reads in part as follows,

> "And upon the court having considered the evidence and upon the defendant (by his counsel) accepting unequivocally that he has breached and remains in breach of the court's order dated 25 September 2020 as to paragraphs 1, 2 and 4 entirely and as to paragraph 3 in general, but not entirely, and upon the court therefore being satisfied beyond reasonable doubt in determining that the defendant stands in contempt of court by reason of his substantial

continuing breaches of paragraphs 1, 2 and 4 entirely and paragraph 3 substantially, but not entirely, of the court's order dated 25 September 2020…"

And then the order goes on to adjourn the proceedings and give further directions.

35 What I also said, which is encapsulated in a recital, is this. The court indicated that it expected the defendant to demonstrate at the adjourned punishment hearing the following:

(1) The defendant will have promptly vacated the land and agricultural buildings (not the residential home at Caton Farm House) at Catlin's Farm (by removing all livestock and equipment and belongings) and will have delivered up the land and agricultural buildings of Catlin's Farm to the claimant in belated compliance with part of paragraph 1 of the order of 25 September 2020; and

(2) The defendant will have promptly vacated the land at Star Fen (by removing all livestock and equipment and belongings) and will have delivered up the land at Star Fen to the claimant in belated compliance with paragraph 2 of the order of 25 September; and

(3) The defendant will have promptly delivered up to the claimant all of the partnership equipment listed in schedule B to the order dated 17 February 2020, (insofar as any equipment has not already allegedly been delivered up to the claimant) in belated compliance with paragraph 3 of the order dated 25 September 2020; and

(4) The defendant will have promptly paid into the partnership bank account the sum of £46,786.50 in belated compliance with paragraph 4 of the order dated 25 September 2020;

(5) The defendant (together with his family and any licensees permitted by the defendant) will either have already vacated the residence at Caton Farm House (if Carol Machin shall no longer reside there) or will have taken practical steps to prepare (and shall therefore be immediately ready) to vacate Caton Farm House as soon as Carol Machin shall no longer reside there; and

(6) The defendant will have promptly paid all existing liability in respect of any costs orders made against the defendant previously within these proceedings.

36 Just to explain, the reference to Carol Machin is a very sad and unfortunate one. The essential reason why I adjourned the punishment element was that that elderly lady was in the last stages of her life, suffering from a terminal decline and, although the language is suitably discreet, what was anticipated, as sadly has come to pass, is that she died and therefore there was no expectation that anyone should leave the house before she died and that is why paragraph 5 of the recital is set out in the terms which it is. She died sometime before Christmas.

37 The order and its recital continues,

> "And upon it being recorded that, at the adjourned punishment hearing the court presently considers that the defendant's liberty is very likely at risk and any failure by the defendant to conduct himself (between today and the adjourned punishment hearing) in accordance with the court's expectations listed at (1) to (6) above will substantially undermine any request by the defendant then either to purge his contempt or for the court to issue a punishment other than immediate imprisonment for contempt of court."

38 That act of mercy, as I am satisfied it was, to allow the family to cope with the demise of Mrs Machin, gave the defendant, if not a unique, certainly a particular opportunity to show good faith, notwithstanding the enormous delay and the apparent inactivity to that date. It is with great regret that I record that nothing further seems to have happened. The demise of Mrs Machin has occurred. The family remains in situ. The animals and the land and equipment remain precisely as they were. Indeed, there is some evidence - although I do not regard this as a determinative feature in any way - to suggest that there is even more activity going on in terms of farming activity. There is no evidence presented to me as to the plans for the Greetham family to move, to vacate, or what alternative properties there are. There is reference in passing to his partner having properties but it is not clear whether there would be a move to any one of those or whether any one of those would be realised to raise funds.

39 What is said is if the procedural attempt to overturn the entirety of the order does not succeed, then an attempt will be made to satisfy the order, item by item, ticking them off one by one, to use Dr Joseph's expression. It is suggested that there is perhaps £700,000

readily available. For reasons that I set out in my other judgment, that is illusory. As to the £400,000, it needs to be approved by the borrower and then will probably only amount to £300,000. As to the balance of £300,000, that is conditional and the condition will never be met. And, in any event, that figure will fall far short of the amount that is required to resolve all of the outstanding liabilities. And since, obviously underlining it all, there is an expectation of remaining at Catlin's Farm, it seems to me almost impossible to envisage how compliance will ever be undertaken if that is the position.

40 Therefore, the very sad fact is that, notwithstanding that golden opportunity which he had, nothing more has happened. He therefore remains in substantial contempt of court, precisely in the terms already found in December. As to item 3, where only a partial admission was made, I only deal with him on the basis of that partial admission and make no additional adverse findings. But it now falls to me, therefore, to deal with him for those admitted contempts.

41 It is necessary to look at the aggravating features as well as the mitigating features. The first aggravating feature is the length of time he has had since February to do what is required in this case. The second is the impact on third parties, not only the immediate litigation itself with Thomas, but with the wider family and including with his former wife, who remains patiently out of funds because of his default. It also has impacted, I am quite satisfied on the family's well-being, their mental and physical health, for reasons that have long been documented.

42 A further aggravating feature is, it seems to me, the highly tactical and strategic way in which this has been dealt with and, notwithstanding the best endeavours of Dr Joseph, whose optimism is to her credit, there never seems a realistic opportunity to do the right thing in this case. There is always an excuse; there is always some future pot of gold which never quite seems to materialise.

43 And the other aggravating feature, it seems to me, is the disregard of the court's opportunity to do the right thing. It seems to me that Mr Greetham is simply determined to sit there as long as he possibly can, in defiance not only of the other members of the family but of the court itself, whatever the consequences. There will be personal consequences but there are consequences for others because this is a ruinous expensive litigation and the costs, however

they are paid in the end, will never be recovered, which is good news for the lawyers but very bad news for this family.

44 On the mitigation side are some very substantial points which Dr Joseph has highlighted. The first is that this all arises out of a dispute with which Mr Greetham finds it very difficult to engage objectively. He is so emotionally tied into this and so, therefore, subjective that he finds it difficult to do the sensible thing, and so there is an element here of self-destruction. The second mitigating feature is his very age. We have checked and he is 79 years of age and the prospect----

MR STUART: Your Honour-- your Honour, I obviously hesitate to interrupt, but he's not 79, he's 69.

JUDGE ROGERS: Is he?

MR STUART: He might be 70.

JUDGE ROGERS: I am so sorry.

MR STUART: He's 69----

DR JOSEPH: No, he's 79. I've been told he's 79. He should know his own age.

JUDGE ROGERS: All right.

MR STUART: (Inaudible) his age.

JUDGE ROGERS: Mr Stuart, I'm not going to resolve it; I'm going to assume he is 79.

45 There may be an issue, but he is certainly of advancing, if not advanced, years and the prospect of incarcerating someone in any circumstances of that age is a very unpalatable one and, of course, someone of that age would find it very much more difficult to cope.

46 There are, by way of mitigation, further compelling tragic family circumstances. The recent loss of the aunt, Mrs Machin, and, as I understand it, even today the loss of the partner's father, about which we know very little but it appears that he himself has died in tragic circumstances this very day and the grief being felt by this family I can well understand.

47 The next mitigating feature is the particular vulnerability of Mr Greetham. I have said repeatedly that I do not regard him as lacking litigation capacity but all that I have read does demonstrate a mental fragility. He has suffered from depression and has had, over the years, some very challenging life circumstances and I take that into account. I also bear in mind

his home circumstances. Although he is an older father, he has a very young child and a partner and disruption of family life is always a matter of significant mitigation.

48 The next feature, which really is the other side of the first coin, is I am sure he is desperately devoted to this farm and these pieces of land which he regards as his history and his livelihood, and so it is a bigger wrench than simply giving up an inanimate asset that some may have.

49 A further mitigating feature would be if he were putting forward a sensible suggestion of compromise. As we reach closer and closer to the day of reckoning, I suspect that there is a little bit more realism coming to light and I very much hope that that is so. But, at the moment, unless there is full compliance with the orders, he will be unable to settle his debts and meet all of the liabilities and he must understand that.

50 It is a great pity that he has left this remote hearing; he was present for the first part but now has decided not to re-engage on the remote platform. He may be finding this----

DR JOSEPH: Your Honour, I'm sorry to interrupt. Your Honour, it's because of his partner's (inaudible).

JUDGE ROGERS: Thank you.

DR JOSEPH: So he apologises for that.

JUDGE ROGERS: Apology accepted. I was going to say it may be that he feels it is better to be with his father and I do understand that, but I am proceeding in any event.

51 The last matter of mitigation which is both personal and general is the existence of the Covid-19 virus in the current global pandemic. This hearing in some ways could not have come at a worst moment, Dr Joseph submits, 5 January, the very day after the Government's announcement of yet a further tightening of the restrictions. And whilst I did not regard it as a reason to adjourn the proceedings generally because the criminal and civil courts are proceeding, indeed the Lord Chief Justice this very day has made a public announcement to that effect, as I understand it. Nevertheless, it must be regarded as a piece of mitigation. It is already recognised in conventional sentencing exercises in the Crown Court that the imposition of a custodial sentence during the coronavirus is more onerous than otherwise. Both are the regimes in prison stricter, but also the spread of the virus in that environment and the precautions and so on that need to be taken means that it is a more exacting and

onerous punishment and therefore custodial sentences have deliberately been shortened in overall length and, on occasion, suspended for that very reason. That is the general point. The specific point is, of course that that aged either 69 or conceivably 79 he is in a high-risk category of individuals. I doubt that he has yet had the vaccine, or else I would have been told of that, and therefore he is vulnerable and I have to take that fully into account.

52 It seems to me, therefore, that I have to balance those serious aggravating features against those many mitigating features. I have not been told of any other breaches of criminal or civil law and therefore, although there is a huge history of discontent within this family, which is a very unhappy one and need not be referred to in these proceedings, there is no doubt much about his character which is commendable. He can be a very difficult individual and has been found to be over the years, but that perhaps is beyond his appreciation.

53 I have to look, of course, at the seriousness of the default itself. These are very personal matters for him but they are, in the end, simply paragraphs in a civil order which is designed to resolve this long-standing dispute. Some, for example vacating a personal property, are very much more challenging than simply disposing of machinery, and I understand that. But the reality is that he has been in breach of those paras. 1, 2, 3 in part and 4 and continues in breach in precisely the same terms. There is, therefore, continued serious breach of significant elements of the original order which, if not complied with, make it entirely unenforceable and render nugatory the civil and associated divorce proceedings. So, this is, indeed, a serious matter. He has, as I said earlier, had the courage substantially to admit the breaches which is to his credit, although, sadly, he had little choice as the evidence is clear.

54 I have to bear in mind all of the potential options of disposal. They range from making no order but simply marking the contempt by a finding, through the question of the imposition of financial penalty, through the sequestration of assets (which is not really in play in this case for very obvious reasons), finally to the imposition of a custodial sentence and, within that, deciding whether it is an immediate sentence or whether there are grounds for suspension. To make no order would be wholly inappropriate and insufficient in this case. Dr Joseph asks me to impose a fine. Of course, it is a less immediately severe penalty than a custodial sentence, but it is wholly inappropriate and impractical in this case. There is no basis for the offer of what would have to be a very substantial financial penalty, even if I were to consider it, which I do not. It would fall into precisely the same bracket as all of the

other unpaid liabilities and debts which, on his own case, he has had the opportunity to settle up to today but has chosen not to. In those circumstances, I do not regard the imposition of a fine as a proportionate or commensurate with the level of breach, nor do I regard it as in any way a useful lever toward settlement of the entire case, which of course is what is required here.

55 In my judgment, this case can only be met by a period of custody. I have to take into account those aggravating and mitigating features to which I have referred, both in setting the quantum of the custodial sentence but also addressing the issue of suspension. In terms of the quantum, it seems to me that this is a very serious breach which could, in other circumstances, warrant quite a substantial sentence. The court's powers are limited to two years' imprisonment and such an order would be nowhere near the maximum but it could be a substantial number of months, in my judgment.

56 Taking account of what I regard as very substantial mitigating features and the particularly onerous element of the coronavirus, I fix the custodial term in this case at 42 days, that is, in other words, six weeks. The key question is whether I should suspend it. I have come to the conclusion that I should not. The breaches are so serious that they must be marked, in my judgment, by an immediate sentence. The opportunity, really by way of an anticipatory suspended sentence, was set out in the recitals to that order and yet nothing has been done. In all of those circumstances, the only way, in my judgment, that compliance with the order - which is the ultimate objective in this case - can occur is to mark these breaches by a custodial sentence. Of course, the court has to mark its disapproval of the conduct of Mr Greetham, but that is subsumed within the overall approach which I have set out.

57 I bear in mind very much Dr Joseph's point that this should not brand him a criminal per se; it is a custodial penalty imposed by the civil court for contempt and is just that. It has the great advantage of being an order that is capable of being reduced by the purging of contempt. There have been attempts, before even the sentence was imposed, to purge contempt which was wholly misconceived, but I understand what was really behind that. But in my judgment if there can be, even at this late hour, really satisfactory ways of compliance, then the sentence itself may ultimately be reduced in its effect. But any application to purge, of course, would have to be made at the appropriate time, once the clear evidence was in place and the best evidence of all would be if funds were made available to Thomas's solicitor and the property had been vacated and the farm land and

animals and machinery at least steps had been taken to begin the disposal, but that's all for another day.

58 I am going to do something, however, that is perhaps exceptional and I hope is a further element of mercy in this case, bearing in mind the mitigating features that I have set out. Mr Greetham is not present in this court and of course has now disappeared from the call on the cloud video platform so is not here to hear me deliver this judgment and impose this penalty, but he is represented and his brother, fortunately, is here and has listened to everything that I have said. What I propose to do is make the committal to prison but I will give him until 15 January to surrender himself to the bailiff for transportation to prison. That is a period of some ten days. He must do that and he must submit himself on that day or before to the bailiff at an agreed time and place to be taken to prison. But what it does, of course, is give him the opportunity at really the 11th hour, possibly the 59th minute of the 11th hour, to take yet further steps, because if his committal can be avoided or reduced, no one will be more delighted than I. That would give him, if those steps had been taken, the opportunity to apply with actual notice to purge his contempt.

59 The terms in which therefore this order will take effect are that, having made the findings I did on the last occasion, I impose upon each of the breaches in paragraphs 1, 2, 3 in part and 4 a term of 42 days' imprisonment, not suspended but immediate, but all of those breaches will run concurrently with each other so that the total is 42 days. He will be told that at the halfway period of that, namely after 21 days, he will be able to be released. Of course, he may apply to purge his contempt, unusually before even the sentence begins or at any stage during the custodial term of the sentence in the terms that I have just described.

60 I make it plain - he is not here to hear me say this but it will be passed on - that this is not a once and for all punishment because of course upon his release, if he remains in contempt of court, it would be open to Thomas to renew an application for committal and it may be that further punishment - and, axiomatically, punishment increases in length and severity with continued breach - may follow.

61 There will be a warrant of committal. If he refuses to surrender to the bailiff then I will order his arrest by warrant and he will be taken presumably to Lincoln prison or such other establishment as is appropriate. The court will draw up the committal order but it will be endorsed in that way.

62 In order that there can be no doubt about it, Mr Stenson, the solicitor, must be kept in the loop in terms of the appointment with the bailiff so that, if he wishes to, not necessarily in person, he can ensure compliance with any agreement which is reached.

CERTIFICATE

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