IN THE WINCHESTER COMBINED COURT CENTRE

Case No: H00PO451

Courtroom No. 1

The Law Courts
High Street
Winchester
SO23 9EL

Wednesday, 5th January 2022

Before:
HIS HONOUR JUDGE PARKES QC

B E T W E E N:

PREMIER MARINAS LIMITED

and

ROBERT LOOKER

MR J ENGLAND (instructed by Shoosmiths LLP) appeared on behalf of the Claimant
NO APPEARANCE by or on behalf of the Defendant

JUDGMENT
(Approved)

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HHJ PARKES QC:

1. This is an application by Premier Marinas Limited to commit the defendant, Mr Robert Looker, for contempt of court for his alleged disobedience of an order of the court.
2. Mr Joseph England of counsel represents the claimant; the defendant is neither represented

nor present at court. For reasons which I shall give, I have decided nonetheless to proceed with this hearing in his absence.

3. The claimant is, as its name suggests, the owner of a marina at Port Solent where the defendant has berthed and stored his 14-metre vessel, Silverwind, for some years. There is a long history of problems between the claimant and the defendant, into which I need not go, save to say that there have been problems with repeated non-payment of storage fees and possibly also berthing fees, I know not, resulting in proceedings in Chelmsford County Court commenced in November 2018 for the unpaid fees.

4. Judgment was obtained and the matter was duly transferred to the High Court so that a writ of control could be issued. It may be that the Chelmsford proceedings and the transfer to the High Court underlie what appear to be the defendant's conviction that the Portsmouth County Court has no jurisdiction in this matter.

5. There were numerous delays over enforcement, and I think that in March 2021, the claimant ultimately accepted a settlement in relation to the unpaid fees which presumably involved acceptance of a sum less than the judgment debt.

6. On 26 October 2019, going back a couple of years, it appeared that the vessel had started taking on water, so it had to be lifted out, and the defendant was allowed to store it ashore on a month-by-month basis until 31 July 2021.

7. There were further problems with payment of storage fees and, as a result, the claimant informed the defendant on 1 August 2021 that his permission to store the vessel would be withdrawn in 30 days. In other words, he was given notice to remove his vessel from the marina by 1 September 2021. He did not move it and it remains at the marina now.

8. The claimant accordingly issued proceedings in the Portsmouth County Court on 13 September 2021, seeking unpaid storage fees of £2,715.20 and an injunction compelling the defendant to remove his vessel from the marina. The cause of action is, of course, trespass, because the defendant no longer has any right to keep his vessel at the marina, his licence to do so having been revoked.

9. On 4 October 2021, the claimant applied for an injunction to compel the removal of the vessel. The application was on notice, and it was supported by a witness statement of Mr Geoffrey Collins, the finance director of the claimant.

10. The defendant responded neither to the proceedings nor to the application, as a result of which the claimant applied on 11 October for default judgment, and that application, together with the application for an injunction, was heard by District Judge Robin Wilson

on 20 October 2021.

11. The defendant neither attended that remote hearing nor made any representations; but there is no possible doubt that he had notice of the hearing. The order of the court contains helpful if lengthy recitals, some of which I shall read:

> "Upon the court sending the defendant an email at the start of the hearing putting him on notice that if he did not attend the hearing by 10.15, the hearing would proceed in his absence;
> Upon him not attending the hearing;
> Upon the court being satisfied that he had due notice of the hearing on 20 October from his correspondence with the claimant on 13 October and 19 October 2021, in which the claimant put the defendant on notice of today's hearing and of the application for default judgment;
> Upon the court being satisfied that the claim was effectively served on the defendant, it having been served at his usual last known address in accordance with CPR6.9;
> Upon the court noting that the claimant's application for default judgment was made pursuant to CPR12.4(ii) as the claim includes a claim for a remedy other than a monetary remedy;
> Upon the court being satisfied that the application for default judgment was effectively served on the defendant;
> Upon the court being satisfied that it has jurisdiction for the claim and the application notwithstanding the defendant's contention that it did not have such jurisdiction".
>
> The order continued:
>
> "It is ordered that the claimant is granted default judgment on the claim in default of acknowledgment of service in the sum of £4,263.60 in damages and £7,263 in costs and in the form of a final injunction granted in accordance with the terms set out in a separate order issued by the court dated 20 October. The total sum of £11,526.60 is due within 21 days, so by 4pm on 10 November 2021.
> The hearing listed for 12pm on 27 October 2021 be vacated and alternative service of this order by email is authorised".

12. The hearing listed for 27 October was, as I understand it, the original date for the hearing of the application for the injunction which was instead dealt with on the occasion of the application for the default judgment.

13. The injunction, which is headed with a penal notice, states that:

> "On 20 October, the court considered an application for an injunction and ordered that Mr Robert Looker must remove the vessel, Silverwind, from Port Solent Marina, South Lockside, Port Solent, Portsmouth, Hampshire, PO6 4TJ on or before 4pm on 10 November 2021".

14. The order is stated to remain in force un 19 October 2022 unless before then it is revoked by

a further order. It is further ordered that the need for personal service is dispensed with. Alternative service by email is authorised and it is provided that the defendant must pay the claimant's costs as set out in the court's order granting the claimant judgment. A power of arrest was attached.

15. It records also that the defendant did not appear, having been given notice of the hearing, and it records the claimant's undertaking to pay any damages ordered by the court if it later decided that the defendant had suffered loss or damage as a result of the order.

16. The defendant did not remove the vessel by the deadline of 4pm on 10 November and it remains now on the claimant's land.

17. On 18 November 2021, the claimant then issued this application for the committal of the defendant for breach of the court's order. That application sets out, entirely properly, all the rights that the defendant has. It is made in the normal form of contempt application, namely court form N600. It identifies the nature of the contempt as being breach of the court order of 20 October in the following terms, namely that he must remove the vessel, Silverwind, from Port Solent Marina on or before 4pm on 10 November 2021.

18. Thus, in summary, the application refers to, first of all, the making of the order by District Judge Robin Wilson; the dispensing with the need for personal service; the penal notice; and the fact that, on 21 October, Mr Elliot Bishop, Head of the Luxury Asset Group at Shoosmiths, the claimant's solicitors, had emailed Mr Looker to inform him of the terms of the order made at the hearing. The application was supported by an affidavit by Mr Bishop, who states that later on 21 October he served the order upon Mr Looker by email. He states in his affidavit that Mr Looker did not remove the vessel by the deadline and that, as at the date of the application, it remains at Port Solent Marina.

19. That application was personally served on the defendant by a process server on 7 December 2021.

20. On 1 December, I made an order for directions providing that the application would be heard at Winchester Combined Court, The Law Courts, High Street, Winchester, not at Winchester Guildhall, which is where the County Court currently sits in Winchester, on a date in January 2022 and at a time which would be notified to the parties, and it provides that the parties and their representatives should attend court in person and, in particular, that the defendant must attend court for the hearing of the application. It warns that if he were to fail to attend, the court might proceed in his absence and might, whether or not it proceeded in his absence, issue a warrant for his arrest and production to the court.

21. The order informed the defendant that he had the right to remain silent, although the court might, if appropriate, draw an adverse inference from his silence, and that he might, if he wished, put in written evidence, but he was not obliged to give evidence whether in writing by witness statement or orally at the hearing. However, if he wished to make a witness statement, he must file it at the County Court in Winchester and serve it on the claimant's solicitors by 4pm on 17 December 2021. In addition, there was a notice to the defendant giving him the usual notice of his rights, in very much the same terms as form N600.

22. The defendant did not file any evidence and has not, as I understand it, done so at any point or engaged (other than by email) with any part of these proceedings.

23. Unfortunately, when the notice of hearing was issued on 14 December, it stated erroneously that the hearing would take place today at the County Court at Winchester sitting at Winchester Guildhall, precisely in contradiction of what I had said in my order. That was plainly a clerical error. My order and the notice of hearing were served personally on the defendant on 15 December.

24. I am not as concerned as I might have been about the error in relation to the notice of hearing, because it has been quite clear from the fairly constant stream of emails from the defendant to the court that he has no intention of attending today's hearing. Moreover, had he attended at the Guildhall this morning, he would have been redirected to the Law Courts. I have asked my clerk to check whether he has appeared at the Guildhall, and, unsurprisingly perhaps, he has not. Had he done so, of course, I would have delayed this hearing until he was able to come up here to the Law Courts to make whatever submissions he wished.

25. Accordingly, the court has now assembled but the defendant is neither present nor represented. Plainly, I have the jurisdiction to proceed in his absence. There is an express provision enabling me to do so at part 81.4(2)(o) of the Civil Procedure Rules. The question is, or was, whether I should proceed in his absence.

26. I have decided to proceed in his absence, and I have done so for the following reasons. Firstly, the defendant has undoubtedly been served with notice of the application; he is well aware of the proceedings, as is perfectly apparent from the series of emails which he has sent to the court. Secondly, he has raised no point in the series of emails which suggests that he has any defence at all to the allegation that he has knowingly breached the order of Judge Wilson.

27. The basis which he advances for resisting the application seems to be that HHJ Shanks, who

is, I understand, the designated family judge at Chelmsford County Court, has sole jurisdiction over the matter. He has never explained on what basis he makes this assertion which, so far as I can see, is wholly groundless. However, it may be related in some way to the fact that the earlier proceedings for unpaid storage fees were brought in the County Court at Chelmsford.

28. Possibly his most coherent effort at explaining the basis of the submission is contained in an email which, astonishingly, he sent to Mr Bishop on Christmas Day. He referred to what he calls Mr Bishop's arrogance and temerity in filing a contempt of court application that seeks a custodial prison sentence for this respondent, a longstanding client of Premier Marinas, whose yacht, Silver Wind, has been berthed at Port Solent for 33 years since it opened in 1988. He went on: "An important distinction is made, given the aforesaid, that Silver Wind is/was and indeed, still remains in the lawful CENS jurisdiction of Chelmsford Family Court, DFJ Her Honour Judge Fiona Shanks – fact".

29. I do not know and, as I understand it, neither does Mr Bishop nor Mr England, what "C-E-N-S" means and I do not think the defendant has ever explained it.

30. He continued:

> "Thus your UNLAWFUL court applications (plural) and the Court Order of DJ Wilson sitting at Portsmouth County Court on 21 October 2021 is both null and legally void.
>
> Regrettably, the apparently supine Judge did, indeed, recklessly and unlawfully seal your Draft Order before his court in which you have had the brass neck (temerity) to claim your Unlawful High Court costs when you are/were and indeed remain inviolate of Section 41 County Courts Act – FACT!.

31. In addition, he went on to say:

> "… your unlawful High Court proceedings were sealed by Cheltenham & Gloucester High Court Registry in clear breach of s41 County Courts Act when:
> (i) The Chelmsford County Court order; albeit ex parte, then still remained undischarged until March this year 2021 – FACT. Thus, Chelmsford County Court retained the LAWFUL jurisdiction of the undischarged CCJ (County Court Judgment) until March of this year – fact. Thus s.41 applied both in FACT and LAW".
>
> …….
>
> "As you/are/were aware Mr Bishop no N244 court application was ever made by you under Section 41 of the County Courts Act. The Chelmsford County Court letter dated 22 August 2020 written on the authority of the District Judge concerned who had granted the court

> order on 30 November 2019, sitting at Chelmsford County Court by definition confirms the same in the court letter of 22 August 2020. You have a copy; I suggest YOU read it1
>
> With regard to your contempt application on 5 January, the court is aware I shall not be attending on clinical grounds. I simply refer you, Mr Bishop, to the following legal authority: Given the aforesaid KNOWN and KNOWABLE facts of this case and your acts and omissions, Mr Bishop, your Contempt Application is bound to fail both in FACT and LAW with wasted costs".

32. Then the defendant referred to a couple of authorities on contempt which seem to have no bearing on this matter, but he does say correctly that the burden of proof, whether the contempt is a criminal or a civil one, is to the criminal standard.

33. It appears that Mr Looker is under the misapprehension that, because the claimant earlier proceeded in the Chelmsford County Court and then there was a transfer to the High Court for enforcement purposes, that that in some way has the consequence that the County Court at Portsmouth and now at Winchester lacks jurisdiction to deal with this entirely new and separate and distinct cause of action.

34. His references to section 41 of the County Courts Act suggest that he is referring to the transfer of the previous proceedings to the High Court for purposes of enforcement.

35. However, nothing that he has said, in my judgment, begins to raise any answer to the jurisdiction of the Portsmouth County Court to make the order that it has, nor any defence to the claimant's contention that he is in contempt of court by failing to comply with that order.

36. There is a helpful checklist of the relevant matters which the court ought to consider when proceeding in the absence of a defendant in such cases. It is referred to by Mann J in the case of *Yuzu Hair & Beauty Ltd & Anor v Akilan Selvathiraviam* [2020] EWHC 1209 (Ch) at paragraph 41. The checklist is taken from an earlier case of *Sanchez v Oboz* [2015] EWHC 235 (Fam) and it includes the following questions:

> (1) Whether the respondent has been served with the relevant documents, including the notice of the hearing. The answer to that is clearly yes.
>
> (2) Whether the respondent has had sufficient notice to enable him to prepare for the hearing. My answer to that is yes.
>
> (3) Whether any reason has been advanced for his non-appearance. Yes, it has, and I will return to that.

(4) Whether by reference to the nature and circumstances of the respondent's behaviour, he has waived his right to be present (i.e. is it reasonable to conclude that the respondent knew of/was indifferent to the consequences of the case proceeding in his absence?). In my judgment, it is reasonable so to conclude.

(5) Whether an adjournment would be likely to secure the attendance of the respondent, or at least facilitate his representation. I can see no reason why that would be so. He has said that he will not attend today for medical reasons, but he has not asked the court to enable him to attend by remote video link which would have been perfectly feasible. Indeed, that was the basis on which the hearing took place before District Judge Wilson.

(6) The extent of the disadvantage to the respondent in not being able to present his account of events. I see none in this case because there is nothing in any of the emails which the defendant has presented to the court which offers any explanation for his behaviour. He has, in effect, given his account in emails insofar as he appears to want to do so, and I see no advantage to him in proceeding today without enabling him to repeat that account orally to the court.

(7) Whether undue prejudice would be caused to the applicant by any delay. It would be. Further substantial costs have been incurred today. If the matter were adjourned without the court dealing with the application at all, then those costs would have been wasted and it may well be that they are not capable of being recovered. I know that there have been difficulties with enforcement in the past.

(8) Whether undue prejudice would be caused to the forensic process if the application were to proceed in the absence of the respondent. My answer to that is no. His position has been clearly stated.

(9) The terms of the overriding objective, including the obligation on the court to deal with the case justly, expeditiously, and fairly. I have that very much in mind and it seems to me that the overriding objective is a strong factor in favour of my proceeding, in all the circumstances.

37. I hesitate only over no.3 on the checklist. I have a distant recollection of an email to the court, amongst the flurry of emails from the defendant which I have seen over the weeks, which referred to a heart condition. As I recall, the defendant regarded it as being supported by a letter from a doctor saying that he had "a febrile illness". As far as I am aware, a febrile illness is not the same thing as a heart condition, and I do not think that there was

any suggestion from the doctor that his condition, whatever it was, should prevent him from attending court. In any event, I think that email would have been sent in early December at the latest.

38. Matters may have moved on since then because, on 30 December, the defendant wrote to the court saying that he was clinically unwell. This was an email sent to the court and copied, which has not invariably been the defendant's practice, to Mr Bishop, on 30 December at 11.46. It read: "The court has been made properly aware that this defendant is clinically unwell and is currently self-isolating pending their" - he must have meant "his" - "clinical assessment at Addenbrookes Hospital Cambridge on 22 January". Then he went on to set out what he saw as the true legal position, suggesting that HHJ Shanks and I need to communicate about the case.

39. The email referring to his being clinically unwell resulted in my asking the court staff to contact the defendant. They did so on 4 January, in an email which explained that I had asked court staff to contact him regarding the next day's hearing:

> "You must attend the court tomorrow. The only exception would be if you provide convincing medical evidence which informs the court that you are medically unfit to attend court. If you fail to attend court then you will be found guilty of contempt of court; a warrant is likely to be issued for your arrest".

40. He replied twice to that email on 4 January. The first said that, "A clinical certificate, as requested, will be filed later today despite the same having already been filed with your court, albeit effective with Portsmouth CC". It had not, in fact, been filed with the court at Winchester; I cannot speak for Portsmouth. In the second email, the defendant said:

> "Dr Henderson has just telephoned to say the current clinical certificate of exemption will be delivered late this afternoon", and he provides the telephone number of the practice, and continued, "Either way, this respondent is clinically unfit to attend Winchester on 5 January pending the Addenbrookes Hospital appointment on 22 January. May I respectfully suggest that the hearing tomorrow be relisted accordingly? Notwithstanding", and the point is yet again made, "that Silverwind is generally reserved to Her Honour Judge Shanks' CENS jurisdiction".

41. The court then received a doctor's letter. I think that it was an attachment to an email sent by the defendant. It is not signed but then, as an email, one might not expect it to be, although the medical note itself does not carry any reference to it being an email. That may not matter, and I only mention it because Mr England queried its form. As I say, it is not signed as such, and it bears no markings to suggest that it is part of an electronic

communication. That may not matter.

42. It reads as follows, under the heading "The Stansted Surgery":

> "To whom it may concern, 4 January.
> Dear Sir or Madam, Re: Robert Looker: date of birth: 28 December 1954.
> This letter is to confirm that the above patient has been diagnosed with ischemic heart disease, cerebral vascular accident (stroke) and hypertension (high blood pressure). While there is no national policy currently on shielding from Covid and in the light of these conditions, it is medically reasonable for him to consider reducing any unnecessary social contact and travel in light of the increasing numbers of Covid diagnoses being made nationally. I hope that this information may be taken into consideration accordingly".

43. There is nothing in the doctor's note that says that the defendant is prevented from attending court for medical reasons. At most, it suggests that, given his condition, it would be undesirable. The defendant has not, at any stage, applied for an adjournment, unless the brief reference to re-listing the hearing in his first 4 January email could be taken to be such an application; nor has he applied for a remote hearing, which I assume would have obviated medical concerns.

44. In the circumstances, it seemed to me there was no good reason not to proceed today. Any adjournment would have entailed wasted costs which, as I say, the claimant might well not be able to recover.

45. I must then consider the question of whether the defendant is guilty of contempt of court by failing to remove the vessel. The essence of what the court must find in order to reach such a conclusion is contained in the judgment of Clarke J as he then was in the case of *Masri v Khoury* [2011] EWHC 1024 (Comm) at paragraph 150 where he said:

> "In order to establish that someone is in contempt it is necessary to show that (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach".

46. Mr England, in his skeleton argument, makes the point by reference to *Arlidge, Eady and Smith on Contempt of Court*, and by reference to the recent Court of Appeal decision in *Varma v Atkinson & Anor* [2020] EWCA Civ 1602, that the defendant's conduct must be intentional, but that it is not necessary for the claimant to prove that the defendant intended the breach or knew he was breaching the court order. That may be a distinction without a difference in this case, but I bear it in mind.

47. The fact is that, in this case, he was served with the order by email on 21 October 2021 by

Mr Bishop in accordance with the order of the court. On 22 October, he emailed the court under the heading "Point of Order" that there was:

> "No permission sought (N224) much less granted under s.42 County Courts Act to validate any concomitant legal proceedings either in the High Court that DJ Wilson has seen fit to grant these costs by way of damages in the same £ quantum?(!) No LAWFUL service of these Proceedings in your Court had been served". Indeed, these Proceedings upon which a Summary Judgment was UNLAWFULLY granted by DJ Wilson were returned to your court undelivered. Please confirm by return (a) the returned date received by your court and (b) whether DJ Wilson was made properly aware of this on 20.11.21 at the *ex parte* hearing".

It appears, therefore, that he had received Mr Bishop's email.

48. On 27 October, there was an email in which he said that an appeal was pending. However, no application for permission to appeal has been received at the County Court at Winchester of which I am aware. Mr Bishop is not aware of any application either. The defendant would by now be substantially out of time to make such an application.

49. On 5 November, he sent an email to the Portsmouth Court, saying:

> "10 days have now elapsed….. What has happened at your court is UNLAWFULL (sic). To be sure, the District Judge in question and with whom I might add the solicitor for Premier Marinas is clearly on First Name terms with is in itself a ground for judicial recusal".

50. Pausing there, I am told by Mr England that, as I would expect, that accusation is simply untrue. He goes on:

> "This is a toxic torpor where my yacht SY Silver Wind has been berthed at Port Solent since 1988 (34 years) and this owner will not yield to coercion or extortion in the form of the UNLAWFUL acts and omissions of the solicitor in question with very strange ethics; much less the designated FD of Premier Marinas in the form of Mr Collins. A judicial review of these UNLAWFUL acts and omissions is this Respondent's repost (sic) to this UNLAWFUL fait compli (sic). Quis custodiet ipsos custodes?" (Who shall judge the judges, but the judges themselves).

He plainly regarded the order that has been made as a form of coercion to which he would not yield.

51. On 10 November, which is the day by which the vessel should have been removed, he emailed Mr Bishop to say:

> "One cannot be in breach of an order that (1) cannot be opened and (2) much less read. Notwithstanding, you are aware that said Order is Appealled (sic) and as such all legal rights are and indeed remain

> generally reserved. For the avoidance of any doubt: There being no breach is (sic) these known and knowable circumstances; and what is more, the Court have the evidence of same.
>
> Final comment Mr Bishop, You do your worst, and I shall do my best, both in FACT and LAW".

52. That last sentence, I think, was in response to an email from Mr Bishop warning him that at 4pm on that day, 10 November, unless the vessel was removed, he would be in breach of the injunction and an application would then be made to have him committed for contempt of court. Then, again, the Christmas Day email to which I have already referred at some length makes clear that the claimant was well aware of the terms of the order.

53. I have no doubt that the defendant has at all times been well aware of the order of District Judge Wilson and what he was required to do to comply with it, and that he has taken a conscious decision to disobey that order and not to remove the vessel. There was nothing ambiguous about the order; it was extremely straightforward and perfectly clear. I am therefore satisfied beyond reasonable doubt that he is guilty of contempt of court in his disobedience to that order by failing to remove the vessel.

54. In the normal course of matters, I would now proceed to sentence. However, in this case, I shall not do so. My reasons are as follows.

55. Firstly, I wish to know more of the defendant's medical condition before I decide on the appropriate sentence. He has a medical appointment at Addenbrookes Hospital in Cambridge on 22 January. He should, in my view, be entitled to attend that appointment and to have the opportunity to serve on the claimant and on the court any medical evidence which might assist the court in the disposal of this matter. Any medical evidence would need to refer in clear and unambiguous terms to the diagnosis and prognosis, preferably from a specialist with knowledge of his condition. Generalisations from a general practitioner will not be of assistance to the court.

56. Secondly, I wish to give the defendant the opportunity to remove the vessel before the sentencing hearing. If he does so, that would be strong mitigation. If he fails to do so, that would aggravate matters, because it would demonstrate a continuing indifference to orders of the court.

57. Finally, I wish to give him a final opportunity to obtain legal representation. He must understand that he is in grave danger of a substantial custodial sentence. He needs to understand just how serious his position is and to come to terms with his predicament, ideally with the assistance of legal advice.

58. For those reasons, I am going to adjourn the sentencing of the defendant to Friday 18 February at 11 o'clock in the morning at The Law Courts, High Street, Winchester, not, I emphasise not, at Winchester Guildhall. The defendant must attend that hearing. If there is any reason to suppose that he may not, I shall issue a bench warrant to compel his attendance.

59. I shall also direct that my judgment be transcribed and served on the defendant so that he understands fully where he stands.

End of Judgment