IN THE COUNTY COURT AT BRISTOL

Case No: 0029 of 2016

Courtroom No. 13

2 Redcliff Street
Bristol
BS1 6GR

Monday, 10th October 2022

Before:
HIS HONOUR JUDGE PAUL MATTHEWS

B E T W E E N:

STRINGER

and

POTGIETER

MR G CHAMBAY appeared on behalf of the Applicant
NO APPEARANCE by or on behalf of the Respondent

JUDGMENT
(As Approved)

HHJ PAUL MATTHEWS:

1. This is the hearing of an application by notice dated 11 April 2022 by the original applicant, the former trustee in bankruptcy of the respondent, Helen Mary Potgieter, for a committal for contempt of court, based on section 363 of the Insolvency Act 1986. I shall have to return to some of the details of this in due course, but, for present purposes, I should say that the problem which I am addressing is the problem that, although counsel for the new substituted applicant, the present trustee in bankruptcy is present and has addressed me, Mrs Potgieter is not present. Therefore, the question arises, naturally, whether I should proceed at all in these circumstances, or whether I should take some other step, whether by simply adjourning or whether by issuing a bench warrant.
2. In circumstances where a contempt of court application is made, there are a number of matters which the Court should take into account in deciding whether to proceed in the absence at all of the respondent. In a case called *Sanchez v Oboz* [2015] EWHC 235 (Fam) the judge, Cobb J, sitting in the Family Division, set out some relevant considerations in paragraphs four and five of his judgment. I am not going to set them out in my oral remarks today, but I will treat them as incorporated by reference into my judgment. In paragraph four, the judge explains why it is an unusual, but by no means exceptional, course to proceed to determine a committal application in the absence of a respondent. In addition, in paragraph five, having paid attention to the factors to which he referred, he considered the following specific issues, which are then set out.
3. Mr Chambay has addressed me in some detail on these points, which he has taken, in fact, from subsequent decisions which have followed *Sanchez v Oboz*. In particular, these are *Calderdale & Huddersfield NHS Foundation Trust v Atwal* [2018] EWHC 961 (QB) and *Pirtek (UK) Limited v Jackson* [2018] EWHC 1004 (QB). He also refers to paragraphs 15-52(a) and the following from the fifth edition of *Arlidge, Eady and Smith on Contempt*, and what, in effect, he addressed me on I have taken into account.
4. In the present case, I am entirely satisfied on the material before me, to the criminal standard, that the respondent has been served with all the relevant documents, including the notice of the hearing. I am also entirely satisfied that she has had sufficient notice to prepare for the present hearing. I note that the matter was last before me on 13 September 2022, when the respondent was not present either. On that occasion, I adjourned matters, giving directions for the filing of evidence, should she so choose, but giving her the appropriate

warnings that she was not obliged to put any evidence in at all, and could not be required to incriminate herself. I also added, at the foot of that order, certain information, in effect a warning explaining the seriousness of the position that she was in. As I say, I am entirely satisfied she has had sufficient time to prepare for this hearing, should she have wished to do so.

5. Thirdly, the point is clear that there is no reason that has been given for her non-attendance. I should in this respect mention that Ms Potgieter wrote a letter in the form of a witness statement, dated 2 September 2022, which appears to have been date-stamped 5 September 2022 on its reception here at the court. I do not recall seeing this on the last occasion when I was dealing with the matter, but I am afraid it does sometimes happen that papers take a while to reach me.

6. In that letter, what Ms Potgieter complains of is that she says (i) she was never informed by the applicant's solicitors in 2019 that those solicitors were applying for a penal notice against her, (ii) she was given no opportunity to defend any such application for a penal notice, and (iii) she assumes that is to deal with insolvency 29 of 2016, which is this case. Furthermore, she goes on to say (iv) that that has significant consequences; she might be held in contempt of court, and she faces the possibility of receiving a substantial fine, or even a custodial sentence for up to two years. In addition, as she says, any judge dealing with the matter would be bound by law to ensure that the Human Rights Act is honoured.

7. Then she goes on to complain that the Human Rights Act is being breached by a failure of the Local Authority to control ground water flooding into her home, which has been ongoing for some 14 years. The home she refers to is the property which is the subject of the allegations in this particular case, namely 9 Station Road, Shirehampton, Bristol, BS11 9TU. Furthermore, she also complains that her human rights are being breached because of a failure by the Local Authority to provide her with an accurate, definitive and correct address. Then, Ms Potgieter goes on to say that if there were to be a contempt of court application against her, she would be entitled to a fair trial under the Human Rights Convention. She would be entitled to legal representation, that the matter is complex and beyond her own capabilities to deal with. She would have the right to apply for Legal Aid, and to have legal representation from a suitably qualified lawyer.

8. That, then, is the substance of her letter/witness statement of 2 September, and I may say that that demonstrates, in case anything else did not so demonstrate, that Ms Potgieter is aware of the nature of the application that has been made against her, and the seriousness of

that application, the fact that she is entitled to legal representation and entitled to her day in Court. However, yet, in the present case, she has chosen not to attend today, despite the order of 13 September, which, as I say, I am satisfied has been served upon her.

9. Therefore, the next point is that, as I say, no reason has been given for the respondent's non-attendance. But this is all of a piece with the history, in her case, of her non-attendance at hearings in this case. She did not attend the hearing before me on 13 September. She did not attend the original application for possession and sale of the house, which was made, and which order is the subject of the contempt of court allegations. Therefore, I am entirely satisfied, as I say, that there is no reason that has been put forward for non-attendance.

10. The question then arises whether the respondent has, in effect, waived her right to take part in the proceedings by showing that she is not interested in, or that she is indifferent to, the consequences of an order being made. In my judgment, given that a copy of the order contained the relevant warnings, and given the awareness which she has demonstrated in her own letter of 2 September, I consider that she was fully aware of the consequences of non-attendance today and has chosen to take the risk that the Court proceeds in her absence.

11. Therefore, then, I move to the fifth point. The question is whether an adjournment would be likely to secure the attendance of the respondent, or, at any rate, facilitate representation. I see no evidence at all that an adjournment would facilitate the respondent's representation. She has had plenty of time to engage representation. She has not approached the court and said, "Oh dear, I am having difficulty in obtaining representation; can you postpone this hearing?", etc., etc. There has been no engagement of that sort.

12. If I adjourned this hearing, would it be likely at least to secure her attendance? I do not think so. She did not attend the last hearing. She has not attended this hearing, which was, effectively, set up in order that she could come having not come on the last occasion. Therefore, I see no reason to suppose that an adjournment is likely to result in her attendance in future, even if it is with the aid of a bench warrant, because, if she is found and brought to Court, it seems to me that the point would be to get her to put her case. However, she does not seem to be interested in engaging with the process. We would simply end up with, effectively, the points which she has made in her letter of 2 September, and that would mean we would simply be in the same position as we already were. Therefore, I am quite clear about the lack of benefit of an adjournment in obtaining her attendance to any useful effect.

13. Next, there is the question of legal representation, and whether there is a disadvantage to the

respondent in not being able to present her account of events. The problem is that, first of all, the respondent has put forward a lot of written representations in the past explaining that it is all the fault of Bristol City Council, and it is not her fault at all. But none of that explains why she has failed to comply with the orders of the Court. Therefore, she has had plenty of opportunity to put her side of the case, and what she has put forward has not resulted in any meaningful answer at all. In fact, this is a case where the facts are brutally clear from the documentary evidence. There has been no dispute as to the sequence of events that relate to this contempt application. In addition, as I say, all the respondent relies upon is alleged wrongdoing, either by Bristol City Council or by the applicant's solicitors in some way or another. However, neither of those can excuse any alleged contempts of aourt.

14. Then, there is the question of prejudice to the applicant. Well, here, as it seems to me, there is enormous prejudice to the applicant and, through him, to the creditors of the bankrupt Mrs Potgieter. In this case, the creditors have had to wait for some time since the original order, the bankruptcy order itself, was made in March 2017. In addition, the order that was made for possession was made on 21 August 2018, and possession still has not been effectively given. I would have to come back, in due course, to consider exactly what happened, but the fact remains that Ms Potgieter is in possession today and declines to give it up. Therefore, the creditors and the applicant have been prejudiced by not being able to get on with the administration of the bankruptcy, sell the property and distribute the proceeds more. The longer it goes on the more of those proceeds will be consumed by costs and fees in the bankruptcy, and the less that there will be for the creditors.

15. Is there any prejudice to the respondent herself? I do not think so. Is there any prejudice to the forensic process by continuing in the respondent's absence? As I see it, the answer is no, largely because the evidence that is already filed is very clear. There is nothing realistically that she is able to add to what she has already said.

16. Then, lastly, there is the question of the overriding objective to deal with cases justly in the way it is set out in CPR Part 1. Here the only persons prejudiced are the applicant and the creditors, who want to progress the bankruptcy. The respondent seems to be completely indifferent to the proceedings, neither attending nor putting forward any effective answer to the allegations. In these circumstances, it seems to me this is one of those unusual, but not exceptional, cases where it is appropriate to proceed in the absence of the respondent.

End of Judgment

Transcript from a recording by Ubiqus
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