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)

JUDGE PAUL MATTHEWS:

1. This is the hearing of an application by notice, dated 11 April 2022, issued by the former claimant and former applicant, the former trustee in bankruptcy of the respondent, Helen Mary Potgieter (who is neither present nor represented). This application is based on the Insolvency Act 1986, section 363, and the procedural provisions of Part 81 of the CPR. Section 363 relevantly provides:

> "[…]
>
> (2) Without prejudice to any other provision in this Group of Parts, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered under Chapter IV of this Part shall do all such things as he may be directed to do by the court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.
>
> […]
>
> (4) If any person without reasonable excuse fails to comply with any obligation imposed on him by subsection (2), he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject)."

2. The application is supported by the former claimant's own affidavit, dated 11 November 2021. There has been no substantive response in evidential terms from the respondent, except a letter, stated to be a witness statement, dated 2 September 2022. This was apparently received at the court on 5 September 2022. It is stated to be from the respondent and signed with a signature which may well be hers, as from "9 Station Road (an indefinitive and incorrect address), Shirehampton, Bristol, BS11 9TU".

3. It says:

> "In the matter of Insolvency 29 of 2016, Helen Potgieter (HP) brought by petitioners Bristol City Council (BCC). HP wishes the following written statement to be brought before any judge who may be presiding over this matter.
> The following written statement is given in the form of a witness statement. HP believes all stated herein to be the truth.
> HP was made aware at hearing, 4 February 2021, application by HP to reopen case 3BS01698, Helen Potgieter versus Bristol City Council and to stop any further action in Insolvency 29 of 2016, that the DWF Law LLP (DWP), 5 St Paul's Square, Old Hall Str, Liverpool, L3 9AE, had applied for a Penal Notice against HP. Apparently, this Penal Notice was applied for some time in 2019.

HP was never informed by DWF at this time, ie 2019, that DWF as applying for such notice, and thus, HP was given no opportunity to defend any such application for a Penal Notice to be awarded against HP. HP has to assume that this was in relation to Insolvency 29 of 2016.

HP now makes the following written statement in regard to any Penal notice possibly being acted upon by DWF, or any other legal representatives appointed by DWF.

A Penal Notice, even in civil action, carries the possibility that HP may be held in Contempt of Court by such a notice. Should this occur, HP faces to [sic] possibility of receiving a substantial fine, or ever [sic] a custodial sentence of up to two years.

Should HP be facing the possibility of any such action, any judge dealing with this matter would be bound by law to ensure that the Human Rights Act 1998 (HRA), is honoured in every aspect of the HRA, especially Articles 6 and Article 8. No exemption to the HRA would apply in this matter.

HP has made is [sic] abundantly clear that Article 8 of HRA is continually being breached against HP, namely in the failure to being able to 'enjoy a private and family life', due to historic and ongoing flooding of HP's home, by BCC's failure to control groundwater flooding into HP's home. This has been continual and ongoing for 14 years. BCC has a statutory responsibility under the Flood and Water Management Act 2010 (FWMA), to control such unprecedented internal flooding at 9 Station rd, Shirehampton, Bristol, BS11 9TU and is failing completely to do this.

HP will now take this matter back to the Appeal Court.

Likewise, HP has the right under Article 8, to have 'respect for correspondence' to be upheld. This aspect of the HRA is also in breach by BCC, and the court, as any correspondence can be and regularly is, delivered to an incorrect address, or even not at all. BCC has failed to address this matter. BCC has a statutory responsibility, Public Health Act 1875 and 2012, to ensure that 9 Station Road, Shirehampton, Bristol, BS11 9TU, is an accurate, definitive and correct address, and has failed completely to provide this. The Judges and Bristol County Court are ignoring this matter completely.

Article 8 of HRA has and is still not being honoured in respect of HP.

Should any Contempt of Court action be brought against HP by DWF, or any other legal representative DWF may choose to appoint, in the matter of Insolvency 29 of 2016, such action would be dealt with in the same manner as a Criminal Court action. Contempt of Court can result in a custodial sentence against HP.

Thus, under Article 6 of HRA, HP would be entitled to a fair trial. Under these circumstances, HP would be entitled to legal representation from qualified legal representatives, in any such action against HP. The matter is very complex and beyond any capabilities of HP to deal with. HP is not a qualified lawyer. HP would have the right to apply for Legal Aid under Article 6 of HRA, and to have legal representation from a suitably qualified lawyer, in any action that

> could result in a custodial sentence being handed down to HP. HP is entitled to a fair trial.
> Judges and the Bristol County Court are a public authority and thus, bound by the HRA.
> Any judge who may be called upon to deal with any penal notice or resulting Contempt of Court action against HP, in relation to Insolvency 29 of 2016, must by law and the honouring of democracy in the United Kingdom, ensure that all aspects of the HRA, most especially Article 6 and Article 8 are honoured.
> At present, HP is not being afforded the rights of HRA and has not been for at least 14 years, since the purchase of the property, supposedly 9 Station Road, Shirehampton, Bristol, BS11 9TU, an incorrect and indefinitive address.
> This written statement is given as a statement of truth. Helen Potgieter believes that all stated herein is the truth"'.

There then follows a signature and a date, 2 September 2022.

4. That is the only evidence which has been put before the court from the respondent, so far as I am aware. I had in fact made an order on the last occasion that this matter was before the court, on 13 September, when this matter was listed for hearing before me and the respondent did not attend. In that order, I gave directions for evidence to be filed, if the respondent wished to file any, but I pointed out that she was entitled to the privilege against self-incrimination and was not obliged to put forward any evidence in response. However, if she did want to, then she had to file it by a certain time. I gave a direction for evidence in reply and then, I directed a listing before me today at 10.30, which the respondent was directed to attend in person, although she would also be entitled to be legally represented if she wished.

5. At the bottom of the order, I added a note to the respondent, which was stated not to be part of the order.

> "If you are the respondent to an application to be committed to prison for contempt of court, take it seriously, because you are at risk of going to prison for up to two years, or being ordered to pay a fine for as much as the court thinks is appropriate. You have the right to legal representation. You have the right to see all evidence against you. You have the right to challenge that evidence and you have the right to remain silent and not say anything. You are strongly recommended to get legal advice on how to respond to the application, whether you are or are at risk of being held in contempt of court, what to tell the court, so that the judge knows anything relevant, to reducing or avoiding the length of the sentence of imprisonment, or the amount of the fine, or whether they should be suspended. If you cannot afford to pay a lawyer, you have the right to legal aid. Although applications for contempt of court are civil proceedings, this legal aid is called

> criminal legal aid, but can be obtained by a solicitor who does not have a criminal legal aid contract, but does have a civil one. You can instruct a solicitor of your choice. If you cannot pay, you must find a solicitor who has a civil court criminal legal aid contract".

6. In this matter, as I say, the original claimant was the original trustee in bankruptcy, Richard Hicken. However, the current claimant and current applicant, is Jackie Stringer. This comes about because of a block transfer order, sealed on 21 December 2021, in the High Court in Birmingham, by District Judge Singh, which removed Mr Hicken from his various insolvency appointments and appointed Ms Stringer to those offices, thereby substituting her for him.

7. The history of this matter is shown very clearly in the evidence before me. First of all, I mention by way of background, that there was evidence of an earlier IVA being entered into by the respondent on 31 July 2014. However, the supervisor of this IVA certified its termination on 10 July 2015, on the grounds of default by the debtor, that is to say, the respondent. Ultimately, a bankruptcy petition was presented. On 7 March 2017, the respondent was adjudicated bankrupt and the bankruptcy was given the number 29 of 2016, County Court at Bristol.

8. Mr Hicken was appointed trustee in bankruptcy on 18 April 2017, by the Secretary of State. He attempted to get on with the administration of that estate. Initially, the respondent did not respond at all, and then, when she did, she refused to cooperate. She also refused to attend a public examination. As a result, an application was made for the respondent's automatic discharge from bankruptcy to be indefinitely suspended. That order was made on 23 May 2017. Therefore, the respondent, this many years later, remains a bankrupt.

9. One asset of the estate is the property, which I have already referred to and to which the respondent herself has referred in her statement, at 9 Station Road, Shirehampton, Bristol, of which the evidence satisfies me, that she is the sole-registered proprietor. (There is also some more personal information given in the IVA documents, to the effect that she was divorced and that she had no dependent children.) However, the respondent alleged that there was flood damage to that property, and that this was caused by failures on the part of Bristol City Council. In the evidence, I have seen documents which relate to that claim.

10. The original trustee in bankruptcy asked the respondent on 17 March 2018 for access to the property (the internal access question), in order to be able to value the property. However, on at least two occasions in April 2018, the respondent refused access for that purpose. In consequence, the only evidence of valuation which the trustee in bankruptcy had, and still

has, was a drive-by valuation, at the end of March 2018. This gave a value of in the region of £275,000.

11. The respondent did bring proceedings against Bristol City Council, in respect of the flooding of the property. However, her claim was dismissed by the judge in the TCC court here in Bristol. Permission to appeal from that decision was refused by Jackson LJ, in the Court of Appeal, on 12 April 2017.

12. Thereafter, the then trustee in bankruptcy applied for an order for possession and sale of the property, on 4 June 2018. On 21 August 2018, District Judge Rowe made an order, both for possession and sale, but also an order that declared that the property had vested in the trustee in bankruptcy and that possession had to be given up by 25 September 2018.

13. Therefore, there is a clear order requiring that the respondent do an act which could not be easier to understand, to vacate the property by a certain date. Needless to say, possession was not given. The trustee in bankruptcy was obliged to apply for and obtain a warrant of possession, which the respondent promptly applied to set aside. That application was dismissed on 5 November 2018, as totally without merit, so we are already a month and a half after the date on which possession should have been given up.

14. The respondent refused to vacate the property on 6 November, so the warrant of possession was reissued on 26 November. The respondent made a further application to set aside the warrant. Again, this was dismissed as totally without merit, and the court made a limited restraint order against the respondent. Eventually, the respondent was removed from the property on 3 November 2018, and possession was taken by the trustee.

15. However, on 4 December 2018, the trustee in bankruptcy discovered that persons unknown had broken the locks and re-entered the property. A warrant of restitution was issued on 8 July 2019 and executed on 15 July 2019, on which occasion the defendant was once again physically removed from the property by the bailiffs. This time, metal shuttering was installed to prevent any further re-entry. However, on 16 July 2019, the then-trustee discovered that the metal shuttering had been removed from the front door and his agent witnessed the respondent using a screwdriver to force entry to the front door. She retook possession and so far as the evidence goes, she remains in possession today. Indeed, I dealt with an application in another matter relating to her last week, in which she gave the same address as her address for service.

16. Following this, the trustee applied for the order of 21 August 2018, the possession order, to be amended to include a penal notice. On 21 November 2018, Deputy District Judge Payne

made that order, so amending the order. I may say, I am not sure whether it is necessary for there to be an order for this purpose, since the penal notice is not actually part of the order, but simply draws attention to the provisions in it. Therefore, it may have been possible to affix a penal notice and ask the court to reseal it without doing that. However, better safe than sorry, and as I say an amending order was obtained by the trustee.

17. There were attempts which followed the sealing of the amended order, to serve the respondent personally, but they were unsuccessful. In February 2020, the trustee applied for permission to serve by alternative means, by serve by post or email. On 28 February 2020, Deputy District Judge Gisby made that order. Therefore, the amended possession order was sent to the respondent on 24 April and was posted to her by letter, dated 27 April. It may be that was the effective date on which it was deemed served. I am not entirely clear about this, but all the events were in April.

18. However, in 2020, the whole country was engulfed in the coronavirus pandemic and lockdown and the rules changed as to when evictions could take place and how they would take place. The consequence was that, in a letter of 29 June 2020, the trustee gave the respondent until 28 August to vacate the property. Then, there was a letter of that date, giving the respondent until 30 October 2020. Finally, on 30 October 2020, there was a letter from the trustee's solicitors to the respondent, seeking to enforce the possession order, since the stay on the enforcement of such orders was now at an end. Therefore, she was warned that she would have to vacate, or this would result in a further application for committal for her contempt of court.

19. There is then an email which she sent to the trustee, on 30 October 2020, which shows that she received the letter of 30 October. This email implied a refusal to vacate. It said: "Send any application you like, which I have a right to defend. The contempt is entirely yours". That words were, I think, addressed to the solicitors. She goes on to say, "I look forward to seeing you in court, both criminal and civil".

20. Then, there was an email on 2 November 2020, from the trustee to the respondent. This referred to the second national lockdown, which had by then set in. It said that the trustee would refrain from taking any steps for now, but would do so once it was again possible. The respondent replied by email to the trustee on the same day, saying that she would continue her (as she put it) criminal case against the trustee's solicitors.

21. During the next 12 months or so, the respondent made numerous applications against the trustee, or the trustee's solicitors and these were all dismissed by the court, I think most, if

not all of them, were dismissed as totally without merit. The consequence was that an extended civil restraint order was made against the respondent.

22. The respondent certainly appeared still to be in occupation as at 11 May 2022, when she gave the property address for a new claim against Bristol City Council, concerning the lack of what she called, "A definitive address". As I say also, I noticed in an application I dealt with last week, that the same address was still being given by the respondent.

23. I come back to the application notice for contempt of court, which this application is based upon. What is says is:

> "I am asking the court to make an order in the following terms. The penal notice in the order dated 21 November 2019 [which of course, is the resealed version of the order of 21 August] be enforced and an order for committal is granted. The respondent being held in contempt of court for a period of time as the court thinks fit, to enable the applicant to realise the property known as 9 Station Road, Shirehampton, Bristol BS11 9TU and 3) The costs of this application be the costs in the bankruptcy. The grounds upon which the applicant claims to be entitled to the order, are set out in the affidavit of Richard Hicken, filed herewith, which in brief are that the defendant is in breach of the penal notice contained within the order of District Judge Rowe, dated 21 August 2018 and varied by Deputy District Judge Payne on 21 November 2019 and has failed to deliver up vacant possession of the property. Whilst the affidavit of Richard Hicken satisfies the requirement of CPR 81.4(2) (a-s), to assist the court, a brief summary of facts has been prepared, pursuant to CPR 84.4(2) (h) and is attached to this application".

Then, various other details are given. I do not think I need to read the summary of events, as, effectively, I have just gone through those.

24. The service of this application is deposed to by the witness statement of Mr Paul Arnold, who is a process server, on 28 June 2022. He attempted postal service on 16 June, at 7.30 in the morning and he says this:

> "I attended at the property at 7.30am on Thursday 16 June 2022 and received no response at the door, although a lady with blonde hair was seen to look out of an upstairs window to see who was at the door, but pulled back when she saw me looking up at the windows for signs of occupation. Repeated knocking for around 10 minutes produced no response".

25. He then says this:

> "On Wednesday 16 June, a letter of appointment with a copy of the notice of hearing attached, was sent to the debtor by prepaid first-class post. A copy of my letter appointment is attached to this statement

> and marked 'A'. I attended the property early for appointment at 5.25pm and watched the property until the time for appointment at 6pm, but saw no signs of activity. I spoke with an elderly neighbour at 1 Pembroke Road, who confirmed that she knew Helen Mary Potgieter and stated to me that she is a pharmacist and definitely still living at the address. At the time for the appointment, I knocked at the door, but received no response. I could see through the glass in the door and could see no signs of activity inside, although could see the house was still lived in. On receiving no response at 6pm, the documents were inserted into the letterbox at the address. In the light of the above, I believe that the documents would come to the attention of Helen Mary Potgieter".

26. On that evidence, it is clear to me that service has been properly effected on Helen Mary Potgieter and that the documents have come to her notice. She was well aware. As I said, she did not attend on 13 September, which is when this application was first listed. On that occasion I gave directions for the hearing today. She has not attended again today. The order of 13 September, was served on Ms Potgieter by email on 15 September 2022. I am satisfied that she has received that and has deliberately chosen not to attend today. Earlier this morning, I ruled that I would proceed in her absence. That brings me to the question of whether a breach of any order has been shown. I emphasise, has been shown to the *criminal* standard of proof, not the civil. That means beyond reasonable doubt.

27. First of all, I consider the law. I have already referred to section 363 of the Insolvency Act 1986 and I need not set that out again. Also, there is CPR rule 81.9(1), which deals with procedure: "If the court finds the defendant in contempt of court, the court may impose a period of imprisonment, an order of committal, a fine, confiscation of assets, or other punishment permitted under the law".

28. The mental element for the finding of a contempt of court is set out very neatly by Lewison LJ, in *Atkinson v Varma* [2021] 2 WLR 536, at paragraph 54, where he says:

> "Once knowledge of the order is proved and once it is proved that the contemnor knew that he was doing or admitting to do certain things, then it not necessary for the contemnor to know that his actions put him in breach of the order. It is enough that as a matter of fact and law, they do so put him in breach".

29. In *Arlidge, Eady and Smith on Contempt, 5th Ed*, at 1294, it is said:

> "The contemnor's conduct has to be shown to be intentional in the sense that what he actually did or admitted to do was not accidental and that he knew the facts which rendered it a breach of the relevant

> order. But there is no need to go so far as to show that the respondent realised that his order would constitute a breach, or even that he had read the order".

30. As I say, I cannot find a contempt of court unless I am satisfied, to the criminal standard, that the relevant actions and mental element are present. The facts in the present case show that there was an order clearly stating that the respondent was to give up possession by a certain date. There was a failure to do so. The respondent was removed from the property by bailiffs for the first time, then went back into possession and a warrant of restitution was obtained. It was executed. The respondent was removed for a second time by the bailiffs and the respondent still went back into possession, indeed using a screwdriver to force entry to the door and apparently, according to the evidence, is still there.

31. However, because of the Covid crisis and the two national lockdowns, the trustee's hands were rather tied and nothing much happened until more recently, when the restrictions were removed and it became possible to resume the enforcement of orders of this kind. I am entirely satisfied on the evidence to the criminal standard that the respondent, first of all knew what she had to do, which was to give up possession of the property, and that she has failed on numerous occasions to do so. Indeed, she has broken back in on at least two occasions in order to take back possession, which she was not entitled to, especially given that the property belongs legally and beneficially not to her, but to the trustee in bankruptcy, as part of the bankrupt's estate. Also, I am so satisfied that she not only knew of this order, but she deliberately breached it in the sense that she did those actions deliberately, of refusing to give up possession and then breaking back into possession.

32. Accordingly, I am entirely satisfied first of all, that there has been a breach of the order and that the respondent is in contempt of court. Also, I am satisfied that the respondent has had sufficient warning and is sufficiently aware of the seriousness of the circumstances, to know that the contempt of court application was likely to be successful and yet, she has done nothing about it. Therefore, I conclude, in my judgment, that the respondent has committed a contempt of court.

End of Judgment

Transcript from a recording by Ubiqus
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