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. I have to decide the question whether, in light of the finding of contempt against the respondent, I should proceed to sentence in her absence, or whether I should take some other course, such as adjourn or issue a bench warrant, or whatever. This is a matter which is separate from the question whether to hear the case in the absence of the respondent, and there are some authorities which bear on this issue.

2. In *JSC BTA Bank v Solodchenko* [2011] EWHC 1613 Ch., Mr Justice Briggs, as he then was, on 17 May 2011, had to deal with this very question. What he said on it is set out in paragraphs 16 through to 19 of his judgment:

> "16. In a case where a serious contempt has been proved in a respondent's absence, it is, in my judgment, appropriate for the court to pause before proceeding immediately to sentence and to consider whether the matter should, in the alternative, be adjourned. There are a number of reasons for this:
>
> (a) In ordinary criminal proceedings, a decision to proceed to trial in the defendant's absence by no means leads automatically to sentencing in his absence, as well. Although I profess no expertise in criminal procedure, my understanding is that, in such circumstances, a criminal court will frequently afford a defendant an opportunity to attend to mitigate, all the more so where a custodial sentence is on the cards.
>
> (b) The balance of factors which, as here, lead to a conclusion that an absent defendant will suffer no injustice if contempt is proved in his absence may well not lead to the same conclusion in relation to sentence. Liability may, as here, be straightforward, but the possibility of purging contempt or other mitigation may well mean that an immediate sentence could cause, or at least risk, injustice or unfairness.
>
> (c) An adjournment during which the respondent is notified that a serious contempt has been proved and that there is a real likelihood of his being imprisoned may serve the beneficial purpose of bringing him to his senses and ensuring compliance. Alternatively, it may simply be fair to afford him that opportunity.
>
> 17. Mr Smith QC for the Bank, submitted that, in the *Stepanov* case, Roth J did, on similar facts, proceed straight to sentence without any apparent pause after finding that contempt had been proved. It was another case of breach of the disclosure provisions in a freezing order, where the respondent was resident abroad at the time of the hearing and was regarded as unlikely to return.
>
> 18. I wish to cast no doubt on the exercise by Roth J of his discretion in that case to proceed straight to sentence. For all I know he did pause or, at an earlier stage, weigh separately, but at the same time, the pros

> and cons in relation both to proof and sentence. Furthermore, Mr Stepanov had, until just before the hearing of the contempt application, active legal representation and, I infer, advice from which Roth J may well have concluded that he knew fully the risk that he was running, so that an adjournment would serve no purpose.
> 19. Having myself paused after finding contempt proved, I have reached the conclusion in this case that a modest adjournment should be ordered before sentence is passed. My reasons follow:
>
> (a) Mr Shalabayev is a foreign national who, although apparently a fluent English speaker, is unlikely to have obtained any qualified English legal advice about the risk of a sentence of imprisonment which he now faces.
>
> (b) That risk, as I wish to make clear by this judgment, is a very serious one indeed. Without in any way prejudicing the matter, I can safely say that a sentence of imprisonment is a strong probability if Mr Shalabayev continues to be as unresponsive as he has been to date.
>
> (c) It is inherent in the Bank's application that Mr Shalabayev be imprisoned, that there is perceived to be a real (i.e. more than fanciful) prospect that he will wish to re-enter the jurisdiction at some time in the future. Otherwise a sentence of imprisonment would be a pure case of the court acting in vain.
>
> (d) If an adjournment is coupled with an immediate bench warrant requiring Mr Shalabayev to be brought to court for sentence, he will be as likely to be dealt with effectively, if he returns, as he would be if a sentence of imprisonment is passed now, giving him liberty to apply to purge once imprisoned.
>
> (e) Importantly, that course will enable the court to be better equipped to decide on an appropriate sentence at that stage, taking into account anything that Mr Shalabayev might then wish to advance by way of purging or mitigation".

3. In that case, the judge decided that he would adjourn rather than proceed directly to sentence. On the other hand, in the much more recent case of *XL Insurance Company v IPORS Underwriting Limited* [2021] EWHC 1407 Com., Cockerill J, on 26 May 2021, faced a similar question. Essentially, by going through the matters which I have already gone through this morning in deciding that I would hear this case, she decided that she would hear the matter in the absence of the respondent, and paragraphs 46 and 47 set out the relevant details of that part of the decision. As she says, in paragraph 56: "For the reasons given in this section, I conclude that it is appropriate to consider XL's contempt application, despite Mr Corcoran's absence at the trial".

4. Subsequently, having found that the elements of contempt of court were proved to the criminal standard, and that Mr Corcoran was guilty of contempt, she went on to say, in paragraph 88:

> "The next question is whether it is appropriate to sentence in Mr Corcoran's absence. For, essentially, the same reasons given above, I conclude that it is".

5. She amplifies these reasons in a number of paragraphs following, one of which Mr Chambay quite rightly drew my attention to, which is paragraph 93. There the judge says:

> "These are serious, persistent, and deliberate breaches of court orders. I require no persuasion that this is a case where a sentence of imprisonment is appropriate, despite all the caution with which one reaches such a conclusion".

In other words, the facts of that case were particularly strong and striking. The question I have to ask myself is whether I consider that this is a case where I ought to adjourn, with or without a bench warrant, or whether I should proceed immediately to sentence.

6. It seems to me that the major factors in this case are that first of all, the respondent has simply failed to engage with this process throughout. Right from the outset, when she was ordered to vacate the premises, she has declined to do so. When she was forcibly evicted on two occasions, on each occasion she broke back in, and she remains in occupation today. She has just not engaged with the process.

7. She failed to come to court on the last occasion when it was before me, and again today, when it is once more before me. She has provided no evidence in opposition, save for the written statement of 2 September 2022. This, I have to say, does not address the acts which are alleged to be, and which I have found to be, in contempt of court, Instead it simply says, "Ah, but the City Council and the Trustees' solicitors are in the wrong", rather than that there is any defence to the allegations that are made against her. It is difficult, in the circumstances, to see why it would achieve anything to adjourn further, because, first of all, she may well not come again but secondly, she will have nothing further to say if she does come. I bear those points in mind.

8. In addition to that, I do also find it important to take account of the fact that the breaches in the present case are so clear and so serious, that they strike at the very heart of the administration of justice. When the court says you do a thing then you should do it. If any conduct of a respondent to a contempt application could ever be regarded as "cocking a snook" at the court, then this conduct is that.

9. I accordingly consider that this is one of those very unusual cases, indeed, if not exceptional where there is little or no purpose to be served by adjourning, not even with the aid of a

bench warrant, and that I should, in these circumstances, proceed directly to sentencing.

End of Judgment

Transcript from a recording by Ubiqus
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