

IN THE COUNTY COURT AT BIRMINGHAM

Birmingham Civil and Family Justice Centre
33 Bull Street
Birmingham
B4 6DS

Date: Thursday 5th January 2023

Before:

HER HONOUR JUDGE TRUMAN

Between:

MIDLAND HEART LIMITED

Claimant

- and -

MS SANDRA VIOLA BROWN

Defendant

MR SINGLETON (instructed by **MS HARGREAVES**) for the **Claimant**
The **Defendant** was not present and was not represented

APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

[Transcriber's note: transcript prepared without access to case documents.]

HER HONOUR JUDGE TRUMAN:

1. This matter concerns an application to commit the Defendant, Sandra Viola Brown, to prison, for failure to abide by the injunction order made by Mr Recorder Khangure KC, on 8 November 2022.
2. The Defendant did not attend on that occasion, although the Recorder was satisfied that the steps taken by the Claimant to serve her were sufficient and would constitute alternative service of the claim form and supporting documentation, with a deemed date of service being Monday 31 October 2022.
3. The Recorder was satisfied that the Defendant had repeatedly failed to give access to the Claimant, to her property, at 20 Hope Street, West Bromwich, for the purposes of carrying out the annual gas safety inspection and test. She was required to give such access, upon being given at least 48 hours' notice in writing by the Claimant, and it was directed that in the event that she failed to provide access as required, that the Claimant would be entitled to enforce the order by entering the said property, by forcing or drilling the lock, if necessary, to carry out the necessary home inspection and to undertake, in particular, any electrical, gas, fire safety and emergency works that were required, to ensure that the property met all current health and safety regulations. The Claimant was directed to make good any damage to the door, if it were forced, and to make sure that the property would be secure before they left.
4. In view of the difficulties in actually speaking directly with the Defendant, the Recorder made a further order, that the injunction order would be deemed served provided that the Claimant had made not less than two attempts at personal service on separate days, and if that had been ineffective, the Claimant was at liberty to place the order through the letterbox, at 20 Hope Street, West Bromwich, in an envelope addressed to the Defendant, marked, "Urgent, Court Documents – Do Not Ignore", and it would be deemed served 24 hours after being placed through the letterbox.
5. I have, on the court file, a certificate, or rather a witness statement, from Andrew Mapplethorpe, a process server, employed on behalf of the Claimant, in which he sets out that he attempted to serve the Defendant on 9 November, but was unable to obtain a reply to the property. He said the curtains of the property were drawn, so there was no view inside, but he marked the front door, and he made enquiries with neighbours, who confirmed to him that the Defendant continued to reside at the property on a regular basis. He returned to the property on the following day but was unable to obtain a reply. The curtains to the property were still drawn, so there was no view inside. The marker that he had placed on the front door on his previous visit had fallen, indicating that the door had been opened.
6. Due to not being able to personally serve, he placed the injunction order in a sealed envelope, addressed to the Defendant, marked, "Urgent, Court Documents – Do Not Ignore", and posted the same through the letterbox.
7. I am, therefore, satisfied that there has been appropriate service of the injunction order.

8. The Claimant thereafter endeavoured to make arrangements to attend at the premises, for the purpose of the gas safety inspection.
9. On 14 November, I have hearsay evidence of the Claimant hand delivering a letter to the Defendant, posted through her letterbox, at 13.25, which confirmed that an appointment for the annual gas safety check had been arranged to take place on 16 November 2022, at 2.00 pm. The certificate of service does not have a signature, as such, upon it. It has a typed signature, rather than a handwritten one, or a docu-signature.
10. Bearing in mind that these matters have to be dealt with beyond reasonable doubt, I do not consider that I have a sufficient certificate of service from Fizar Aslam in relation to that particular aspect.
11. A further letter was hand delivered to the property, on 15 November, which endeavoured to deal with what the Claimant considered to be the Defendant's concerns with regard to whether or not Midland Heart Limited was actually the Defendant's landlord.
12. The history of this matter is that the tenancy commenced some years ago and was with Focus Housing Limited. The tenancy start date was 11 June 1997. In 2006, a number of housing associations merged, and the landlord became Midland Heart Limited. Exhibited to the witness statement of Rishi Kaushar are copies of the office copy entries, confirming that Midland Heart Limited are the owners of the property. There is also evidence provided that there have been previous possession proceedings against this particular Defendant. A suspended possession order was made. There was a counterclaim for housing disrepair, during which time the Defendant was represented by experienced solicitors. There was no suggestion at that point that Midland Heart was not the true landlord, and indeed this Defendant has paid her rent regularly since 2006 to Midland Heart Limited, until last year. She has had correspondence with Midland Heart Limited, in which she sought to add her son and his partner to the tenancy agreement.
13. The Claimant has concerns as to why she has ceased to pay her rent and why she is now asserting that they are not the landlord. These matters only appear to have arisen since her son and his partner appear to have moved back into the property. Because of their concerns, they have endeavoured to speak with Adult Social Services, who have not been of great assistance.
14. They have also strongly recommended that the Defendant perhaps go back to her previous solicitors for assistance. As far as they are aware, that has not occurred. They have strongly urged her to seek legal advice and have provided her with details of solicitors who might be able to assist. But again, nothing has been heard from those solicitors.
15. I am satisfied, on the information before me, that Midland Heart Limited is indeed the landlord and is entitled, and indeed required by law, to attend at the premises for the purposes of the gas safety check. Those regulations were brought in to try and avoid people dying from carbon monoxide poisoning, and also to ensure, so far as possible, that gas systems were properly maintained. It is a serious matter if that cannot occur,

which affects not only the tenant but the tenant's neighbours if something untoward should occur.

16. On 16 November, I am satisfied that Mr Kaushar attended at the property, along with a colleague, to attempt to carry out the annual gas safety inspection but was refused access. He says that the door was opened by an unknown male and two others, who were stood behind the male recording the Claimant's employees. Mr Kaushar thinks that one of those persons was the Defendant, but she did not identify herself at that particular stage.
17. The male stated that he was representing the Defendant, and he did not understand why the Claimant had turned up at the address, and he refused access to the property, stating that Midland Heart did not own the property and should not be carrying out the gas service. He would not accept that Midland Heart did own the property.
18. At ten to four, on the same day, Fizar Aslam attended the property and posted a letter, confirming a further arrangement for the gas safety check, on 21 November, at midday. A copy of the letter and certificate of service are attached.
19. I am satisfied with that certificate of service, which is docu-signed, and, therefore, is something that I consider would be completed by the relevant person, as opposed to the previous typed signature, which could be completed by anyone
20. I am satisfied that Mr Kaushar attended at the premises on 21 November, at approximately 11.50 am, with employees from the Claimant and the gas safety contractors, with a police presence, due to the hostility shown on the previous visit.
21. Again, access was denied. A male person, who Mr Kaushar understands to be the Defendant's son, answered the door, and said that he had already told the Claimant that the Claimant was harassing him, and that he would not be allowing access to the property. They had displayed their identification, to ensure that it could be seen that they were from the Claimant, but access was still denied. Mr Kaushar advises that the police informed him that he was not permitted, with the Claimant's employees, to push their way past the male or into the property, and that if the male continued to refuse to grant them access, and the Claimant's employees continued to endeavour, they might be charged with assault.
22. In the circumstances, the Claimant could not take advantage of the second part of the injunction order, which permitted them to drill or force the door, if necessary.
23. In relation to the second allegation relating to 21 November 2022, I am satisfied, beyond reasonable doubt, that the Defendant, who was present, as identified by Mr Kaushar, refused to grant access, and, therefore, was in breach of the order of Recorder Khangure.
24. I am satisfied that this application for committal was appropriately served on the Defendant. I am satisfied that there were two visits made, on 30 December and 31 December, but with the process server being unable to speak with the Defendant. I am satisfied that the application for committal, with the appropriate attached documents, were then placed through the letterbox, in a sealed envelope, addressed to the Defendant, marked, "Urgent, Court Documents Enclosed – Do Not Ignore".

25. The Defendant has not attended today, but I was satisfied, in view of service, that it was appropriate to continue with the matter, because of the fact that these are serious matters, which relate not only to the health and safety of the Defendant, but also to her neighbours. This is a longstanding matter that needs to be resolved. Whilst I am satisfied that the Defendant is in breach, I consider that it is appropriate to adjourn sentencing and to give the Defendant a final opportunity to permit the gas safety inspection to take place. If she does do so, that will obviously have an enormous impact on what sentence, if any, the Court then decides to impose.
26. The matter will, therefore, be adjourned for that to occur.

(See separate transcript for proceedings after judgment)

(This Judgment has been approved by HHJ Truman.)