

IN THE COURT OF PROTECTION

Case number 14231863

[Manchester Civil Justice Centre]

Date: 17th September 2024

Before :

[District Judge Matharu
Sitting as a nominated judge of the Court of Protection Tier 1]

Between :

KL
(by her litigation friend, GRACE WHITRICK)

Applicant

- and -

MANCHESTER CITY COUNCIL

First
Respondent/
Claimant

v

MICHAEL ADAMOU

Second
Respondent/
Defendant

Mr Richard Borrett (instructed by **Manchester City Council**) for the **Claimant/First**
Respondent
Miss Hannah Haines (instructed by **Irwin Mitchell solicitors**) for the **Applicant** in substantive
proceedings

The Defendant being unrepresented

Hearing date: 17th September 2024

Approved Judgment

District Judge Matharu:

Introduction

- (1) This is an application by MCC supported by the Litigation Friend for a protected party, for committal proceedings against MA.
- (2) The grounds of the committal application are that Michael Adamou has breached a Court Order (made in substantive Court of Protection proceedings) dated 25th June 2024. That Order was an injunction Order with a Penal Notice which clearly stated “If you do not comply with this Order, you may be held in contempt of Court and imprisoned or fined or your assets may be seized. (“The injunction”).
- (3) The gist of that Order was that Mr Adamou was to vacate “the Property” and after vacating the Property shall not himself (or through others acting on his behalf or on his instructions) come within 200 metres of “the Property”.
- (4) I have already made an Order on 5th September 2024 in accordance with the provisions of COPR 21.8(5) restricting the identification of the protected party which extends to “the Property” which is owned by KL, the protected party. That Order also extends to restricting identification of any possible nexus or otherwise between KL and Mr Adamou.
- (5) On 17th September at a hearing scheduled to commence at 10:00, the Court did not commence the hearing until 10:45 to afford Mr Adamou sufficient time to arrive at Court. He did not arrive and I was asked by Counsel Mr Borrett for the Local Authority, and Miss Haines to proceed with the committal hearing listed for today in Mr Adamou’s absence.

Application to Proceed in Mr Adamou’s absence

- (6) The first question I must ask myself is whether Mr Adamou has had Notice of today’s hearing and any other requisite information to enable him to be ready and prepared for today’s hearing.

- (7) The starting point is that the application to commit MA was served on him on 28 August 2024 with a hearing date of this application being given of 15:00 on 7th September 2024. That evidence of service can be found in the hearing bundle at page 77. And to support that valid and effective service had taken place, Mr Adamou did attend at court on 7 September.
- (8) On that date I did not start the hearing at scheduled time as I had been informed by the parties and my clerk that Mr Adamou was waiting for his solicitors to arrive. I waited 15 minutes. No solicitor arrived so I commenced the hearing. That was the first hearing.
- (9) Mr Adamou informed the Court that he had a right to silence. He is absolutely right, he has a legal right to silence, he is not required to give evidence in his defence and incriminate himself in any way. Directions were given by me as to the return date of the application, who was to be called by the Applicant and I identified what the issues were that the Court was to make findings on. Mr Adamou was also urged again to seek legal representation if he had not instructed solicitors as none were at Court that day. I specifically told him of today's hearing date and also informed him that if he did not attend the hearing may proceed without him.
- (10) At that hearing, when he was at court, he was told the application would again be heard at this particular court, as he had demanded it be heard at the Crown Court. He was also told the start time. In accordance with the Court of Protection Rules ("COPR 2017"), the order I made was served upon him. That certificate of service is dated 11 September, the Order was also emailed to him on 9 November by the solicitors for the Litigation Friend.
- (11) Relevant facts are that Mr Adamou has emailed the solicitors of the Litigation Friend repeatedly, and the Court has also been inundated with communications from Mr Adamou generally and about today's hearing. He demanded a "Bluetooth-enabled TV to be made available for him at Court today to present his evidence". This request was responded to, yet he is not here today.
- (12) I am entirely satisfied that Mr Adamou has had Notice of today's hearing.
- (13) Mr Borrett submits that the court should be required to have regard to the authority of *Sanchez v Oboz* [2015] EWHC 235 (Fam) (repeated in *P v Griffith* [2020] EWCOP 46), and that we should proceed in his absence. His starting point was that hearing a Committal application in the absence of a party is not a usual course to take, but it is not an exceptional course. He took me point by point through the relevant legal principles identified in that case from (i) – (ix) and made his submission on Mr Adamou's failure to attend and how it should be dealt with pursuant to those considerations:-

i) Whether the Respondent has been served with the relevant documents, including the notice of this hearing.

He submitted that the Court had already found that he had been served.

ii) Whether the Respondent has had sufficient notice to enable her to prepare for the hearing.

He submitted that Mr Adamou has had at least three weeks to prepare for today's hearing since service of the Committal application.

iii) Whether any reason has been advanced for the respondent's non-appearance

He said that Mr Adamou had given no notice or any reason to the parties or the Court of his not coming to Court.

iv) Whether by reference to the nature and circumstances of the respondent's behaviour, they have waived their right to be present (i.e., is it reasonable to conclude that the respondent knew of, or was indifferent to, the consequences of the case proceeding in their absence).

He submitted that Mr Adamou had waived his right to be present. He did know of the possibility of the case proceeding in his absence as he was warned of this at the conclusion of the last hearing on 5th September.

v) Whether an adjournment would be likely to secure the attendance of the Respondent, or at least facilitate their representation.

Mr Borrett says that Mr Adamou has had one adjournment already, no explanation has been given for his non-attendance today or any request made for an adjournment. This Court cannot say that another adjournment will secure his attendance or facilitate representation. In fact, on this point, solicitors for the Litigation Friend contacted the law firm that Mr Adamou had told the Court and the parties he had instructed at the hearing on 5th September. He reiterated the name of that firm and a solicitor in that firm in subsequent emails to them and the Court. That firm told them that they had made it clear to Mr Adamou that they were not willing or were unable to act for him prior to that hearing of 5th September. He is leading the Court and the parties astray.

vi) The extent of the disadvantage to the Respondent in not being able to present her account of events.

Mr Borrett submitted that the disadvantage that inherently existed could be addressed by advocates by putting Mr Adamou's challenges to their witness.

vii) Whether undue prejudice would be caused to the applicant by any delay.

Mr Borrett stated that there was no real prejudice to the Applicant.

viii) Whether undue prejudice would be caused to the forensic process if the application were to proceed in the absence of the respondents.

Mr Borrett stated that there was little that he could add to this. He could not envisage

what, if any undue prejudice would be caused to the forensic process. The Court was required to make findings of fact on straight forward issues.

- ix) The terms of the overriding objective to deal with cases justly, expeditiously & fairly.

Mr Borrett submitted that the Court was well rehearsed in the application of the overriding objective. Justly, expeditiously and fairly meant to all of the parties that came before the Court including the protected party. There should be no further delay.

- (14) And, he concluded with what MacDonald J had to say at paragraph 8 of P v Griffith:-

“...the court must bear in mind that committal proceedings are essentially criminal in nature and the court should proceed in the absence of the accused with great caution, that findings of fact are required before any penalty can be imposed....Articles 6(1) and 6(3) ECHR are actively engaged, entitling the respondent to, inter alia, a “fair and public hearing” and to have adequate time and the facilities for the preparation of his defence”.

- (15) What Mr Borrett says is that Mr Adamou has been on notice of the Committal application since 28th August 2024. There has been significant dialogue with him on “the Injunction” before the application was even issued. He has had sufficient time to instruct legal aid solicitors. Details of such solicitors have been provided to him by the solicitors for the parties. He attended a hearing on 5th September which was adjourned to afford him yet more time to seek representation if he did not have any, and to prepare any defence. He indicated in his emails to the Court and to the parties that he would present his evidence to the Court at today’s hearing. He says that the Court should proceed. This is supported by Counsel for the litigation Friend for KL.

Decision on Proceeding in the Absence of the Defendant

- (16) The sensible course of action for me is to go through those matters identified in the case of Sanchez v Oboz [2015] EWHC 235 (Fam) that Mr Borrett took me through. I shall adopt the roman numerals in that case. My decision is:
- (17) i) I have at the outset of today’s hearing satisfied myself that he has been served with Notice of today’s hearing and the relevant materials on both the 5th September and for today. This comprises of the hearing bundle and Counsels skeleton arguments.

(18) ii) I am in entire agreement with Mr Borrett that Mr Adamou has had sufficient notice to prepare for today's hearing. The earliest "notice" he had of the Committal application was on 28th August. Today we are almost 3 weeks after that date. He has misled the court in intimating that he had legal representation procured and that they would be attending today's hearing. He has had assistance from lawyers from the Litigation Friend providing details of solicitors who offered legal aid. He has had reasonable opportunity to "make good" on securing legal representation.

(19) iii) Is there any reasonable excuse for non-attendance?

I am checking my e mails from the Court office to establish if, even at this hour any contact has been made by Adamou to explain his non attendance. There is no email from him and I find that no reason is given, let alone "a reasonable excuse".

(20) iv) Whether by reference to the nature and circumstances of respondent's actions he has waived his right to attend?

On that I say, MA has absolutely no doubt what is to happen today. He was informed by me on 5th September when he was in Court that if he didn't attend today's hearing, the Court would proceed in his absence. Further, the Committal application dated 19th August was supported by a document identifying the Grounds of the Application. In bold type it set out Mr Adamou's legal rights in bulletin points. One of these bulletin points stated "*If you do not attend the hearing, the Court may proceed in your absence*" and it continued to set out that findings of contempt could be made. It is entirely reasonable for me to conclude that he knew of the consequences of case proceeding in his absence.

(21) v) Would an adjournment secure his attendance or at least facilitate his representation?

I accept Mr Borrett's submissions on this. He has had ample opportunity to secure legal representation. He has represented to the Court that he instructed a particular firm who say that they do not act for him and told him this. This was not a mistake on his part but he misled the court. A Committal hearing is a serious matter for the court, parties, and defendant. Would an adjournment be likely to secure his attendance? I cannot answer this with certainty. I cannot even find that this would happen with any reasonable likelihood in light of all the efforts made by parties to assist him in identifying solicitors who offer legal aid for this area of work.

(22) vi) The extent of any disadvantage to the Respondent in not being able to present his account of events

I accept Mr Borrett's proposal that Mr Adamou's case is clearly set out in his communications with the parties and that his position or challenges to their witness can be put to the witness. I go further than this. The Equal Treatment Bench Book demands that parties are expected to draw to the Court's attention a fair picture of the law and the facts. Further under the Court of Protection Rules there is a duty upon legal representatives to help the court to further the overriding objective – which includes dealing with the case fairly. Any disadvantage to Mr Adamou in his not attending can be addressed by active case management of today's hearing and taking account of his view and putting his challenges to the Applicant's witness.

(23) vii) Whether undue prejudice would be caused to the Applicant by delay

Whilst Mr Borrett may be of the view that there is no real prejudice to them, there is one other party who will be heavily prejudiced by any further delay. Very significant prejudice was being caused to the protected party, a lady who was 92 years of age whose consistent wish was to return to her home, "the Property". It was occupied by Mr Adamou and without his willing to leave the Property voluntarily, she could not return to her home. Undue prejudice would be visited upon her by further delay. She is 92 years of age. At this stage of her life, days and weeks are precious to her. She will be prejudiced by further delay.

(24) viii) I agree with Mr Borrett on this issue.

(25) ix) the terms of the overriding objective to deal with cases justly, expeditiously and fairly

"Justly and fairly" is to everyone, not just from the perspective of Mr Adamou – it is to all the parties in this case and other court users. Everyone is here, including the Claimant's witness. The allocation of limited court resource is a consideration because this day has been set aside to accommodate him and this application. Mr Adamou told the Court on the 5th September that he would require at least 3 hours to question the process server. To accommodate him, I informed him the court would allocate a day of court time so that he would have ample opportunity to raises questions or put his defence to the Claimant. The engagement of the overriding objective is a crucial part of judicial discretion and all factors must be balanced.

(26) Having gone through Mr Borrett's submissions and considering the appropriate authorities, there can be no doubt in my mind that whilst it may not be the usual course to proceed in a Defendant's absence, my deciding to do so on the facts of this case do not render this an exceptional course of action. On the facts of this case, it is appropriate to proceed in his absence and make findings of fact. Subject to the outcome of those findings, the court can decide on the next steps.

- (27) I record that at 11:00am Mr Adamou is still not here – I have told my usher that if Mr Adamou arrives he is to be shown into Court and can, of course take part in the hearing, but he is still not here.

Judgement in the Committal Application

- (28) At 11.40 having heard the evidence of Mr Watson, Process Server I heard submissions from Mr Borrett for the Claimant and also submissions from Miss Haines on behalf of the protected party KL. Any mention of “Applicant” to her is in the context of the Applicant in the substantive Court of Proceedings application.
- (29) I will first attend to the procedural requirements of the Court of Protection Rules 2017. I will then address the compliance with the relevant law. Then, if satisfied with those matters, I will make findings of fact, based upon the evidence meeting the requisite threshold of “beyond any reasonable doubt”. That is the criminal standard of proof that applies in Committal applications.
- (30) The Equal Treatment Bench Book makes clear that advocates and judges should have regard to the interests of unrepresented parties. I have already made mention of this in my judgement as to proceeding with today’s hearing in the absence of Mr Adamou.
- (31) The legal framework is laid out at COPPR 21. The Application is required to be supported by affidavit evidence. This application notice starts at CB16 of the hearing bundle and the Affidavit in support starts at CB32. Also required is a Schedule of Alleged Breaches, which can be found at CB21-25.
- (32) The injunction order Mr Adamou is alleged to have been breached is at CB1. It is dated 25th June 2024 and is in clear terms– clear language, with no confusing or ambiguous terminology which could cause confusion. Mr Adamou had taken occupation of the Property on 4th June 2024. He was ordered to vacate the Property. He had no permission to remain there and was to vacate the Property and after vacating it, he was not to come within 200 meters of it. A penal Notice was attached.
- (33) I have considered the Affidavit evidence of Mr Watson, who came to court to give live evidence. He was questioned by Mr Borrett and by me.
- (34) The “Grounds of the Application for Committal of Mr Adamou”, which can be found at CB21 and CB22 made it clear what Mr Adamou’s legal rights are and what the potential outcome could be. It set out in large bold type what was available to him (legal representation), what he needed to prepare, that he didn’t have to speak, that the application might proceed in absentia. I find that this document is concise and

clear and meets all the necessary legal requirements of relevant information to be given to a Defendant.

- (35) I now turn to the relevant law on contempt: OPG v Salter [2018] EWCOP 27. The contempt which has to be established is disobedience to the order. The order in this case is at CB1 dated 25th June 2024 – made in associated Court of Protection proceedings. I have already identified the salient clauses at paragraph 32 of this Judgement that are alleged to have been breached. He took occupation of the Property, did not vacate it and continues to come within 200 meters of it.
- (36) To have penal consequences, that Order must be clear about precisely what it means and what it prohibits or requires to be done. That Order is as I have already found patently and meets those requirements. There is a penal notice endorsed upon it and it records on the very first page that *“If you the within named Michael Adamou do not comply with this Order you may be held in contempt of Court and imprisoned or fined....”* The consequences of non-compliance are identified.
- (37) The committal proceedings are essentially criminal in nature. The burden of proof is beyond any reasonable doubt.
- (38) That burden of proof lies on Manchester City Council to meet – where there is a presumption of innocence.
- (39) In this case the alleged contempt of court sought to be proven against Mr Adamou is that he disobeyed the Order and continues to do so. He is in “the Property” the Claimant says and refuses to leave.
- (40) Mr Borrett took me to an email at CB93 of the bundle from Mr Adamou, who calls himself “Big Mike”. It is lengthy, and challenges Mr Watson’s evidence. It calls him a “Compulsive liar” and refuses to accept that when Mr Watson went to the Property that he rang the bell because he says that the bell was not working/”operational”. What Mr Borrett continued to say was that this is not apparently a case where Mr Adamou denies that he is in breach of the Order. To the contrary, it is Mr Adamou’s case that he has very right to live in the Property. But, his challenge to the Applicant’s evidence is to the veracity of Mr Watson and what he did or did not do on the days when he effected service of court papers on Mr Adamou.
- (41) I now turn to the evidence.
- (42) I read Mr Watson’s Affidavit dated 19th August 2024 and also had the opportunity to put questions to him. Mr Watson has been in this line of work for 22 years. His evidence was given on Oath.

(43) He was perfectly clear in reiterating the contents of his Affidavit. He explained to me that Mr Adamou had initially identified himself to Mr Watson. It was his evidence that he had seen him sitting in a silver camper van outside the Property. Mr Adamou told him that he was staying in the caravan which was parked in front of the Property whilst it was being carpeted and work was being done inside the Property. He said he would be moving in when the work was done. At that time a blue power cable was being run from the Property to the caravan. And, at a subsequent visit he believed that Mr Adamou was now living in the Property because there was now no longer a blue power cable running from the house to the caravan. Further, he looked through the window of the Property and could see all the way down the front of the house to see Mr Adamou watching the television. Mr Watson's affidavit is very clear that he believes that Mr Adamou is residing in the Property. Neighbours have also been questioned by him and they confirm that the Property is being occupied by this male.

(44) He also gave evidence of the intimidation and threats made by Mr Adamou to him. He said his whole demeanor on a recent occasion was aggressive. Mr Adamou was clenching his fist. Mr Watson told the Court that he had his Bodycam on and would keep a recording of that incident as long as required by the Court.

(45) That is the evidence of Mr Watson. I must now make findings in respect of the eight alleged breaches at CB24. They are:-

- a) Failed, by 15 July 2024, or at all, to vacate "the Property".
- b) On 18 July 2024 was temporarily residing in a mobile home immediately outside (and within 200 metres of) of "the Property".
- c) On 18 July 2024 confirmed orally to the Enquiry Agent that he had not vacated "the Property". He had just had work done inside the house and was sleeping in the mobile home until the work was done. He confirmed to the Enquiry Agent that he "will be moving right back in."
- d) On 31 July 2024 the mobile home occupied by Mr. Adamou on 18 July 2024 remained parked outside "the Property", with power cables running from the property to the mobile home.
- e) On 13 August 2024, those residing in a neighbouring property to "the Property". confirmed orally to the Enquiry Agent that they had seen Mr Adamou frequenting the property on various occasions. They confirmed that Mr. Adamou drove the Black BMW, registration number MJ58 HXG, which had been observed parked on the driveway of "the Property" on 31 July 2024.
- f) On 13 August 2024 was observed inside "the Property". When asked by the Enquiry Agent whether he was residing at the property, he verbally confirmed that he is.

- g) Mr. Adamou continues to reside at “the Property”, or alternatively to inhabit a mobile home which is stationed within 200 metres of “the Property”.
- h) Mr. Adamou continues to come within 200 metres of “the Property”.

My Findings of Fact

- (46) Alleged Breaches (a), (b), and (c) are proven beyond reasonable doubt by Mr Watson today confirming the contents of paragraphs 5,6 and 7 of his Affidavit.
- (47) Alleged Breach (d) is wholly supported by paragraphs 8-10 of his Affidavit and his answers to my questions today.
- (48) Alleged breach (e) is proven beyond reasonable doubt by paragraphs 12 and 13 of his Affidavit and the evidence he gave me today.
- (49) Alleged breach (f) was proven beyond reasonable doubt by paragraphs 14 and 15 of his Affidavit and confirmed on oath today when questioned by me.
- (50) As for Alleged breaches (g) and (h) – that is continuing to reside at the Property or continuing to come within 200 meters of the Property. At the conclusion of the hearing on 5th September, he was given opportunity to conclude this matter without any adverse findings being made against him. I recorded that he said at the end of that hearing “You will make me and my son homeless” - this implies he considers the property to be his home and if he moved out he would be homeless.
- (51) In the email from Mr Adamou produced at CB93 which is dated 31 August 2024 at 02:39 he says “I still have LK’s permission and indeed blessing to be in our home”. LK is a protected party who I have found does not have capacity to make decisions about her Property and Affairs. A Deputy has been appointed to manage this aspect of her life on an interim basis in October of 2023 and on a final basis on 2nd February 2024, and such “blessing” is on his say so alone. I do not accept that when Mr Adamou moved into the Property in June that LK had capacity to give consent or purported “blessing” to him.
- (52) In another email In another email, which is one of many sent to the Court, on 6th September 2024 at 22:04 he says “YOU WANT TO GIVE ME THE SAME STATUS AS A SQUATTER (SQUATTERS RIGHTS)”. He continues... “NO I WILL NOT REMOVE MYSELF FROM THE FAMILY HOME VOLUNTARILY”

(53) I find that Alleged Breach (g) is proven beyond reasonable doubt. And, if he continues to reside at the Property then he continues to come within 200 metres of it. Alleged breach (h) is, therefore, also proven beyond reasonable doubt.

(54) As to findings of fact, each of the breaches has been made out by the applicant by Mr Watson's affidavit evidence, his oral evidence, and Mr Adamou's many communications with the court. No challenge is made by him to the appropriateness of the injunction, the method of service, or anything, it is simply that his position is that "this house is my home". For the avoidance of doubt, Mr Adamou is in breach of my order of 25th June 2024 and he has been found as a consequence to be in contempt of Court. This is proven beyond reasonable doubt.

(55) The Court now must finally address that having made findings as to what Mr Adamou has done as per OPG v Salter I must go on to determine whether it was in Mr Adamou's power to do it. This is the issue of mens rea. That case states:-

"A person or corporation commits a breach of the injunction, and is liable for process for contempt, if he or it in fact does the act, and it is no answer to say that the act was not contumacious in the sense that, in doing it, there was no direct intention to disobey the Order".

(56) There can be no doubt that MA intended to occupy this Property, and intends to remain in occupation. He fully intended his actions – that of taking occupation of the Property and to breach the injunction Order I find that there was direct intention. There is no reasonable doubt as to that either.

(57) I conclude in the words that Mr Borrett used, "that the evidence is overwhelming".

(58) Parties have submitted that whilst it is accepted that the Court must adjourn for sentencing, such period must allow service of today's Order upon Mr Adamou. I must take into account that KL is 92 years of age. Any prospect of a return to home by her must be sooner rather than later. Mr Borrett submits that all procedural requirements have been satisfied to date and Mr Adamou will be notified of the outcome of today's judgment forthwith. Taking those matters into account the return date for any sentencing hearing should be as soon as possible. Once again, Miss Haines for the Litigation Friend supports this request.

(59) Taking all of those particular facts into account, it is important that the protected party's return to home, if it is feasible, is progressed as soon as possible. Any delay to that must be minimized whilst ensuring that Mr Adamou has notice of the decision I have made and the hearing date for sentencing. I must balance this with Mr Adamou's right to a fair hearing. For that reason, I direct that service of the Order must be attempted by personal service but can also be effected by email. He is to be

notified of the outcome of today's hearing as soon as possible by email. The return date for sentencing is Friday 20th September at 10:00 which has been fixed having regard to continuity of Counsel for the Applicant and the Litigation Friend.

- (60) This is an ex-tempore judgment. I am grateful for the provision of a record of a Note of my judgement by solicitors for the parties from which this judgement has been prepared in order that it may be provided to Mr Adamou.

END