

IN THE COUNTY COURT AT BRISTOL

Redcliffe Street
Redcliffe
Bristol
BS1 6GR

Wednesday, 10 July 2024

BEFORE:

HIS HONOUR JUDGE BERKLEY

BETWEEN:

SOVEREIGN HOUSING ASSOCIATION LIMITED

Claimant

- and -

MS JANE HALL

Defendant

MR D BIGWOOD (Solicitor, of Cobb Warren Solicitors) appeared on behalf of the
Claimant

The Defendant did not appear and was not represented

JUDGMENT
Approved

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1. JUDGE BERKLEY: This is an appeal from the order of DJ Ashford in Gloucester County Court given on 26 February 2024. From the short judgment she was able to give (which I understand was after a very short ten minute hearing), DJ Ashford seems to have been sympathetic to the claimant's position where they were seeking an order allowing the claimant to exercise forced (although peaceful in the sense of non-violent) entry into the defendant's premises in order to fulfil the defendant's obligation under the lease under which she occupies the property, to allow the claimant in to inspect the property.
2. The claimant had obtained an injunction under Part 8 proceedings requiring the defendant to allow the claimant access, and from the evidence filed at the court it is clear that she has not been compliant with that order. So the claimant applied to the court for enforcement by way of the forced entry application, as it has been termed.
3. The district judge, whilst again, as I say, sounding sympathetic to the defendant's position, took the view that an application for committal for contempt was the way forward and she declined to accept that she had jurisdiction to make an order under CPR 25.1 allowing forced entry into the property. That had been sought before her by virtue of a combination of 25.1(c), the inspection of relevant property or the detention, custody or preservation of relevant property and then under (d):

"An order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under subparagraph (c)."

4. The judgment is not very fulsome as to why the district judge considered she did not have jurisdiction. The claimant appeals that and the appeal is before me today. The grounds of appeal are stated as follows:

"In refusing the appellant's application for an order permitting it to use force to secure entry to the respondent's property in the event that the respondent failed to comply with the provision of the order of 13 December 2023, DJ Ashford erred in determining that the court lacked the jurisdiction and/or power to permit or authorise such an act. Accordingly, the decision to refuse the application for lack of jurisdiction was wrong pursuant to CPR 52.21(3)(a)."

5. The application eventually came before HHJ Brown KC the DCJ for the Midlands who, once the date of service had been sorted out, ordered a rolled-up appeal hearing which is what this is.
6. In the skeleton argument which has been drafted and filed by Mr Daryl Bigwood, solicitor for the claimant, he sets out three grounds upon which the court might have jurisdiction. He relies on CPR 25.1 to which I have just referred, CPR 3.1(2)(m), the court's general power of case management, and CPR 70.2A, dealing with orders and a failure to comply with orders.
7. Upon opening, I asked Mr Bigwood whether he had argued the 3.1(2)(m) and 70.2A grounds in front of the district judge and he candidly says that he had not. But having read through the skeleton argument and seen the merits of the arguments in those respects and given that these are matters of law, I gave Mr Bigwood permission to argue matters which were not before the district judge because they would not require any additional evidence and in the interests of furthering the overriding objective. Again, at the outset I raised with Mr Bigwood the notes at 25.1.23 of the White Book which deals with 25.1(1)(d) which notes state as follows:

"Where the court grants an interim remedy in the form of any order suggested at 25.1(1)(c), the court (this would normally be at the same judicial level as that granting the primary interim remedy) may grant a further interim remedy in the form of an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out the first order (r.25.1(1)(d))."

It goes on to say:

"An order granting a remedy of this type may be made only by a judge (Practice Direction "Allocation of Cases to Levels of Judiciary", paragraph 2.1, see Paragraph 2BPD.1 above.)"

There is not, in fact, a paragraph 2.1 of that Practice Direction. Paragraph 2BPD.1 refers to general jurisdictional issues as between Circuit and District Judges. Paragraph 2 of the Practice Direction states

that orders made under CPR 25.(1)(1)(h), (f) and (g) may only be made by a judge, and does not refer to Part 25.(1)(c) or (d) at all. It appears, therefore, that the notes at 25.1.23 of the White Book are out of kilter with the latest iteration of the rules themselves. It was accepted by Mr Bigwood that dealing with the appeal under CPR 25 would cause some difficulty without further research into the point.

8. However, having put that to one side for the moment, I invited Mr Bigwood to deal with the submissions under 70.2A. He submits that the defendant in this case is a disobedient party, defined in 70.2A(1) as,

"A party who has not complied with a mandatory order, an injunction or a judgment or order for the specific performance of a contract."

9. So, he says, the defendant falls into that definition. Rule 70.2A(2) goes on to say:

"Subject to paragraph (4), if a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, the court may direct that the act required to be done may, so far as practicable, be done by another person, being --

(a) the party by whom the order or judgment was obtained; or

(b) some other person appointed by the court."

10. It is submitted by Mr Bigwood that the injunction order, despite not being referred to as an injunction as such, is in fact an injunction which seeks to enforce a contract, so it is tantamount to an order for specific performance of a contract. Either way, being a mandatory order, he submits that it comes within the relevant rule.

11. He also submits that the claimant has the wherewithal, as a large social landlord, to gain entry to the relevant property which the defendant leases without doing damage. He says that it is tantamount to requiring the defendant to give access for the purposes of the claimant's inspection, and it is therefore permissible to make an order under

70.2A(2)(a). It is also pertinent, he says, in terms of the exercise of the court's discretion that here the claimant, despite being entitled under CPR 70.2A(3) to charge to the defendant the claimant's costs of gaining entry, it has undertaken to pay for that exercise itself.

12. I accept Mr Bigwood's submission in relation to CPR 70.2A. It seems to me that the court must be in a position to be able to enforce orders that it makes of this nature and I find that Rule 70.2A covers this precise circumstance. The defendant is clearly a “disobedient party”, being a person who has failed to comply with a mandatory order and/or a person who is the subject of an order for specific performance of a contract - the tenancy agreement. The court is therefore empowered to order that the claimant carry out the act required to be done, namely the granting of access to the property in question for the purposes of inspection. The fact that access is gained by unconventional means is nothing to the point in my judgment. The door belongs to the claimant and so any damage done to the door or the frame would not be to the defendant's property (although I am told that access can be gained without damaging either the door or the frame). In fact I doubt that damaging the defendant's property would be a bar to the making of an order under the paragraph, but it weighs in the balance in considering whether to exercise the court's discretion.
13. I note, too, that part 70.2A(4) to which paragraph 2 is expressly made subject (somewhat curiously because it is not a restricting provision), makes it clear that the powers conferred by paragraph 2 are without prejudice to the court's powers under s39 of the Senior Courts Act 1981 (the power to execute instruments) and the court's powers to punish the disobedient party for contempt. This overcomes any perceived difficulties that proceedings for contempt are the only, or even the preferred, way of dealing with a disobedient party in the instant circumstances which, I am told, District Judges often say is the case.
14. CPR 70.2A, if interpreted as I find it should be, is consistent with the Overriding Objective because it gives the court power to efficiently assist the beneficiary of one of its orders, and that beneficiary is likely to be more interested in having the order

complied with from a practical perspective than see the disobedient party punished for contempt, although that power is, as I have already alluded to, specifically preserved, even if paragraph 70.2A(2) is invoked.

15. Accordingly, I give permission to appeal and I allow the appeal, even though this argument was not advanced before the district judge.
16. In those circumstances, and despite the interesting jurisdictional questions that arise out of CPR 25.1 and 3.1(2)(m), Mr Bigwood is content that the appeal is disposed of under CPR 70.2A. I consider that to delve into those other jurisdictional questions with the doubt caused by the White Book notes would be an inappropriate use of court time, particularly since there is no-one here to argue the opposite side. My preliminary views are that the landlord's contractual right to inspect tenanted property is not akin to the preservation of property the subject of proceedings (CPR 25.1), and nor is CPR 3.1(2)(m) wide enough to give jurisdiction to order forced entry into private property. However, I specifically decline to make any findings on those rules in this context.
17. So we are going to leave the appeal at that. The appeal is therefore allowed and I will grant the appropriate order after discussing with Mr Bigwood its terms.

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