

B E T W E E N

MS SUSAN SANSOM

Claimant

- and -

(1) MS SOPHIE LONDON

(2) MS KIRSTY CURTIS

Defendants

JUDGMENT

BEFORE Deputy District Judge Steinhardt at the Stratford Housing Centre, Stratford Magistrates' Court, 389 – 397 Stratford High Street. Stratford. London. E15 4SB on 11 April 2023.

1. This is a claim for possession of 17 Ellison Apartments, Merchant Street, London E3 4PT. It came before me yesterday as a first possession hearing on a busy list at Stratford Housing Court. This written judgment expands upon the short reasons that I gave orally yesterday for my order striking out the claim as an abuse of process.
2. I had in attendance at court the Claimant herself, Mr Cleave a 'solicitors' agent' for the Claimant, the Defendants themselves, and Mr Gough (the duty solicitor assisting the Defendants).
3. The claim was brought on the basis of expiry of a notice under section 21 Housing Act 1988 but uses an 'N5' form and 'N119' particulars of claim, rather than the more commonly used accelerated procedure provided under CPR 55.11 to 55.19 and the forms associated with that procedure. It was issued on 20 December 2022 using a cover letter

with headed paper from 'Landlord Advice UK' and signed by Mr S Charles. On the court file, a receipt for the court fee had been stapled to the cover letter (presumably by court staff), and it can be seen from that receipt that the issue fee was paid by Landlord Advice UK. On the claim form under the heading "Claimant or Claimant's *legal representatives* address to which documents or payments should be sent ..." (emphasis added) the address of Landlord Advice UK was given.

4. I am aware that Landlord Advice UK ltd are not a firm authorised under the Legal Services Act 2007 or regulated by the Solicitors Regulatory Authority to conduct litigation. The person signing on behalf of Landlord Advice UK Ltd, Mr S Charles, is not a solicitor or other person authorised to conduct litigation.
5. At the outset of the hearing, I explained what the cover letter on the court file said, and what the receipt showed. I raised with the parties' representatives that there was an issue with regard to the conduct of the litigation on behalf of the Claimant. With Mr Cleave's agreement, I asked the Claimant about how the case had been handled and brought and she confirmed the following:
 - a. When the Claimant decided that she wished to evict the Defendants she approached Landlord Advice UK, who advised her, drafted the notice under section 21 Housing Act 1988 and sent it to the Defendants;
 - b. Landlord Advice UK then advised the Claimant as to next steps, and it was they (or perhaps more accurately, Mr Charles) who drafted the claim form and particulars of claim. It was sent to the Claimant by email, who signed it and returned it to Landlord Advice UK. She could not recall if she had actually been sent the whole claim or just the signature page; she appeared unfamiliar with the documents and had not read them, trusting Landlord Advice UK to prepare the claim on her behalf.
 - c. As indicated above, Landlord Advice UK then filed the claim and paid the court fee, giving their own details as 'legal representative'. I am not clear who served the claim.
 - d. Ms Sansom was advised of yesterday's hearing by Landlord Advice UK, who asked her whether she wanted to be represented at the hearing. She confirmed that she

did and Landlord Advice UK then arranged, through Jeffrey's Solicitors, for Mr Cleave to represent her today.

- e. Ms Sansom has had no contact with Jeffrey's Solicitors or with Mr Cleave in advance of today's hearing.
6. The issue in relation to the conduct of the litigation by Landlord Advice UK overtook consideration of the substantive claim and I did not therefore review the case, though I note that Mr Cleave handed me an amended certificate of service at the outset of the hearing, telling me that the one that had been filed was 'completely wrong'.

The conduct of litigation

7. The right to conduct litigation is regulated by the Legal Services Act 2007 ("LSA 2007") and is a "reserved legal activity" (s12(1)(a)). A person is entitled to carry out a reserved legal activity where they are an "authorised person" (s13(2)(a)) or an "exempt person" in relation to that activity s13(2)(b).
8. It is a criminal offence for a person to carry on a reserved legal activity unless that person is entitled to carry on the relevant activity (s14(1)). A person who is guilty of an offence under s14 by reason of an act done in the purported exercise of a right of audience, or a right to conduct litigation, in relation to any proceedings or contemplated proceedings is also guilty of contempt of the court concerned and may be punished accordingly (s14(4)). It is a defence for the accused to show that they did not know, and could not reasonably have been expected to know, that the offence was being committed (s.14(2)). On indictment, the offence under section 14 carries a sentence of up to two years in prison (s14(3)).
9. Sch.2 para.4 of LSA 2007 defines the "conduct of litigation" as follows:

(1) The "conduct of litigation" means—

(a) the issuing of proceedings before any court in England and Wales,

(b) the commencement, prosecution and defence of such proceedings, and

(c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).

(2) But the “conduct of litigation” does not include any activity within paragraphs (a) to (c) of subparagraph (1), in relation to any particular court or in relation to any particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to carry on that activity.

10. In the recent case of Baxter v (1) Doble and (2) Doble Associates [2023] EWHC 486 (KB) the High Court considered an application to commit the defendant to prison for conducting litigation when not authorised to do so. It was similar to the instant case in that the defendant had issued and served notices of seeking possession, drafted and filed the claim, and instructed an advocate to attend the hearing. Mr Justice Cavanagh reviewed the authorities at some considerable length (including Ndole Assets Ltd v Designer M&E Services UK Ltd [2017] 1 WLR 4367 (HC, Coulson J) and [2018] EWCA Civ 2865 (Davis, McComebe and Jackson LJ), CA); Agassi v Robinson (Inspector of Taxes) (No 2) [2006] 1 WLR 2126; and Solicitors' Regulation Authority v Khan [2021] EWCH 3765 (Ch) (Fancourt J)). Having reviewed the authorities, Mr Justice Cavanagh set out “four key points of general principle which can be identified in the authorities”:

181. “The first is that the starting-point must be the statutory language itself, and the statutory words must be given their natural and ordinary meaning.

182. The second is that it must be borne in mind that this is penal legislation, which may result in a conviction for an offence with a maximum sentence of two years (or for committal for contempt with the same maximum penalty: Contempt of Court Act 1981, section 14(1)). In Agassi, at paragraph 56, the Court of Appeal said that, because there are potential penal implications, the very obscurity of the statutory language means that the words should be construed narrowly. However, that was said at a time when the defence that the person accused did not know, and could not reasonably have known, that they were engaged in reserved legal activities did not apply. That defence was introduced by section 14(2) of the 2007 Act. This matters, in my view, because the grounds for a very strict and narrow construction are now less compelling. It is no longer a strict liability offence. Nonetheless, as the Court of Appeal made clear in Ndole, it must still be borne in mind, when interpreting the legislation, that this is penal in nature.

183. The third key point comes from the Court of Appeal's judgment in Ndole. This is that substance must prevail over form (judgment, paragraph 67).

184. *The final point is that the question is one of fact and degree in every case (paragraph 68). The Court of Appeal said that an approach permitting individual assessment of the activity undertaken in an individual case is likely to achieve justice.*”

11. Considering everything “in the round” as he considered appropriate, Mr Justice Cavanagh held (at §211) that: -

“The Respondents did everything for Mr Persey in relation to the proceedings that a solicitor or other authorised person would have done. They gave full-service assistance to Mr Persey, including drafting all of the documents required to comply with formal requirements, giving instructions to counsel, making a payment to court, corresponding with the other side, and ensuring that all procedural steps complied with the CPR. Someone must have conducted this litigation, and it would be wholly artificial to say that Mr Persey did it himself, albeit with support and guidance from the Respondents. This would be to under-state their involvement. They conducted the litigation for him.”

12. I consider that the situation in *Doble Associates* is virtually identical to the instant case and that, following *Doble Associates*, Landlord Advice UK have plainly been conducting litigation in this case when not authorised to do so. It is difficult to see what if anything additional a solicitors’ firm would have done, or what else could have amounted to the conduct of litigation if not this. Landlord Advice UK did everything that would be expected of an authorised litigator and their role went well beyond that of providing advice or assistance.

Abuse of process

13. In light of my findings as to the conduct of litigation by a firm not authorised to do so Mr Cleave invited me to strike out the claim on that basis. He explained that he had repeatedly drawn this issue to the attention to those instructing him and that if I struck out the claim he would convey the court’s criticism to Landlord Advice UK. He was clearly concerned both as to the practice in general and as to the fact that his own right of audience (if any) is derived from “*assisting in the conduct of litigation*” (Sch. 3 sub-para. 1(7)). Therefore the matter put him in a difficult and embarrassing position.

14. In response to Mr Cleave’s invitation, I struck out the claim but confirmed that the basis for the strike out was that the claim was, in light of the actions of Landlord Advice UK, an abuse of process.
15. Under rule 3.4(2) *“The court may strike out a statement of case if it appears to the court ... (b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings”*. I note that the focus is on the statement of case, and not necessarily on the claim more broadly, and that the power to strike out includes situations where the statement of case *“likely to obstruct the just disposal of the proceedings”*. In my judgment, and as I explained yesterday, the bringing and conducting of a claim, where that constitutes a criminal offence is by definition an abuse of the court’s process. To focus on the statement of case, the drafting and issuing of a claim naming an unauthorised person as a “legal representative” is such an abuse.
16. In applying rule 3.4(2) the court must give effect to the overriding objective of enabling the court to deal with cases justly and at proportionate cost (r. 1.2), and which includes *“enforcing compliance with rules, practice directions and orders”*. (I note that r. 1.1(2)(f) refers to ‘rules’ and not ‘these rules’.) As Lord Bingham observed in *Lewisham LBC v Malcolm* [2008] UKHL 43 at [19] and [104] *“The courts cannot be required to give legal effect to acts proscribed as unlawful.”* Baroness Hale agreed that the court cannot be expected to give legal effect to an unlawful act. In that case it was argued that a Notice to Quit served by Lewisham was an unlawful act under the Disability Discrimination Act 1995, but I consider the same principle applies here.
17. I have since the hearing considered the case of *Gill v Kassam* [2018] PNLR 3 (HHJ Worster). This was an appeal from the decision of a Deputy District Judge to a Circuit Judge against the deputy judge’s refusal to strike out the claim on the basis that the claimant’s representative (‘Remove a Tenant’) had been unlawfully (and indeed, criminally) conducting the litigation when not authorised to do so. HHJ Worster, allowing the appeal on other grounds, held that the Deputy Judge had been right not to strike out the claim.
- “The Claimants have a perfectly good claim in law for possession. What has happened is that in issuing and prosecuting that claim, a third party (albeit one acting for them) has broken the law. That has no direct effect on the validity of the Claimants’ cause of action or their ability to prove their case. Apart from anything else, the Claimants have not broken the law. I am satisfied that Mr and Mrs Gill were unaware of the problem. [...]*

It would neither be just nor proportionate to deprive the Claimants of their judgment. They have committed no wrong. I raised with Mr Walder the question of whether it was appropriate to strike out because that was the only means the court had to prevent this sort of abuse. He submitted that it was a matter for the criminal law, not for this court. Having considered the matter, I agree. The proportionate response would be to disallow costs, but save for the issue fee, none are claimed. There is no discernible effect on the fairness of the trial, and it should not prevent the Claimants proceeding with their claim.”

18. Gill v Kassam is not binding on me and I consider that notwithstanding HHJ Worster’s considered decision I should nonetheless strike out the claim as being an abuse of process:

- a. The fact that the unlawful conduct is the Claimant’s representative and not the Claimant herself is not determinative. The court is entitled to treat the actions of the Claimant’s agent as, in law, the actions of the Claimant herself, particularly where, at the time of hearing the Claimant had not in any way distanced herself from the actions of Landlord Advice UK. While there is nothing to suggest that she knew they were committing a criminal offence, she did know the facts that made it a criminal offence. That is, that the firm she had instructed was not a law firm and that they had nonetheless filed the claim, paid the court fee, and instructed an advocate.
- b. Even if I was minded to treat the actions of Landlord Advice UK and the Claimant as separate in respect of another claim, I do not consider that it is appropriate in the case of a claim brought under section 21 Housing Act 1988. Such claims are procedural and technical in nature. They involve no ‘fault’ and are not about remedying any underlying civil wrong, loss or damage. Instead, they are about demonstrating compliance with technical requirements. It is accordingly not a case where it can be said that the Claimant had a right to possession independent of the manner in which the litigation was pursued.
- c. I consider that the conduct on the part of Landlord Advice UK was particularly serious. I am aware of at least two other publicised cases involving this company in which they have been conducting litigation when not authorised to do so. In Hammad & Hammad v Paolini, County Court at Clerkenwell & Shoreditch, 27 June 2022 District Judge Pigram said that there was “*something gravely amiss in the way in which the way litigation has been conducted in this claim*”. Similarly in Ojo & Opaleye v McAuliffe, County Court at Bromley 6 February 2019 Landlord Advice UK were

found to have been conducting litigation when not authorised to do so. It appears that despite these decisions being well publicised, Landlord Advice UK have carried on regardless. In the circumstances, and since I cannot censure them with costs, strike out is the only option available to mark this exceptionally poor conduct.

- d. Finally, I consider that the requirements of proportionality and the objective of *“enforcing compliance with rules”* favours strike out. On the one hand, there is nothing to prevent the Claimant from issuing a fresh claim for possession using authorised legal representatives, or indeed as a litigant in person. In the meantime, I am not aware of any loss or detriment to the Claimant caused by the delay, for example by any accruing rent arrears. On the other hand, there is the abuse of the court’s process by a company that can only be well aware that it is not entitled to act as if it were a solicitors firm, but continues to do so regardless. I do not consider that it would be proportionate or appropriate to allow the claim to proceed without consequence and to thereby *“give legal effect to acts proscribed as unlawful.”*

19. Therefore for the reasons given orally yesterday, and amplified above, the claim for possession is struck out.