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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
[2021] EWHC 3877 (KB)



No. QB-2020-003863

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 13 April 2021

Before:

JASON COPPEL QC
(Sitting as a Deputy High Court Judge)

B E T W E E N :

ANTHONY GREEN

Claimant

- and -

(1) STEVEN EDWARD DAWS
(2) RICHARD OWEN JAMES
(3) STEPHEN GALSSBORROW

Defendants

THE CLAIMANT was not present and was not represented.

MR A. HEYLIN appeared on behalf of the Defendants.

J U D G M E N T
(Via Microsoft Teams)

THE DEPUTY JUDGE:

- 1 This is the latest instalment of long running and multi-faceted litigation arising out of a credit card debt incurred by Christine Green, the former wife of the claimant, Anthony Green. The defendants are officers of a finance company called PRA, who is the assignee of that credit card debt, and who sought to enforce the debt against Christine Green, leading to her bankruptcy.
- 2 On 6 December 2019 His Honour Judge Hodge made an order, on the application of the trustee in bankruptcy, that the transfer of a property at 2 Bebington Road, Liverpool, to a company established by Mr Green in the Seychelles was a transfer at an undervalue. The judge set aside the transfer and granted possession of the property to the trustee in bankruptcy.
- 3 A number of unmeritorious applications were made by Mr & Mrs Green in and in relation to the bankruptcy proceedings, and in particular in relation to the issue of the property originally transferred to Mr Green's company. Those applications led to civil restraint orders being made against both Mr Green and Mrs Green in the bankruptcy proceedings. On 13 January 2020 a limited civil restraint order was made against Mr Green. On 20 March 2020 a limited civil restraint order was made against Mrs Green, and on 27 April 2020 an extended civil restraint order was made against Mr Green. The effect of the extended civil restraint order, see para. 3.2(1)(c) of Practice Direction 3C, is that Mr Green is prohibited from making applications or issuing claims:

"... concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order was made ..."

– I interpose: the bankruptcy proceedings:

"... without first obtaining the permission of a judge identified in the order."

And the effect of that prohibition is spelled out in para.3.3 of the Practice Direction:

"Where a party who is subject to an extended civil restraint order –

(1) issues a claim or makes an application in a court identified in the order concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, the claim or application will automatically be struck out or dismissed–

(a) without the judge having to make any further order; and

(b) without the need for the other party to respond to it ..."

- 4 On 9 October 2020 Mr Green issued the current claim. I read from the brief details of claim on the claim form in order to summarise the subject matter of the claim, which says:

"I claim substantial damages as my property was sold to my ex-wife's trustee in bankruptcy making a claim of transfer at under value which

resulted in my property being repossessed and then sold. I believe that this was obtained by legal means as the creditors of my ex-wife, PRA Group (UK) Limited, did not have lawful and legal authority to do so. I also claimed compensation for damages to my personal reputation and my standing in the community and the hardship that this claim of transfer at under value brought to my life. I have incurred damages to my health and well-being and suffered financial hardship all through this claim and continue to do so."

It is clear from that summary of the subject matter of the claim that it, indeed, concerns matters involving or relating to, or touching upon, or leading to the bankruptcy proceedings in which the extended civil restraint order was made. There was no attempt to obtain the permission of a judge named in the extended civil restraint order, in breach of the order.

- 5 The defendants proceeded to file a defence, and on 17 February 2021 they issued an application to strike out the claim both for breach of the extended civil restraint order and for various other reasons relating to the merits of the claim. They also applied for general civil restraint orders to be made against both Mr and Mrs Green. Those applications were listed for hearing before me today, 13 April 2021. On 8 April the claimant issued, and on 9 April served, notice of discontinuance of the proceedings. The defendants nevertheless wished for this hearing to proceed both on the issue of the costs of the proceedings, and also in relation to their applications for general civil restraint orders.
- 6 The claimant objected to the hearing proceeding, arguing that the claim had been discontinued and that there was no basis for the hearing to continue. The court, quite correctly, in my judgment, decided that the hearing should proceed as both the question of costs and that of potential civil restraint orders remain before the court notwithstanding discontinuance. The claimant has not attended the hearing today. He was fully aware of it and has been sent on a number of occasions the Microsoft Teams link to enable him to join the hearing from wherever he may currently be. He has not joined the hearing, and has not made any communication with the court to explain why he has not attended. In the absence of any communication or other explanation from the claimant, I infer that he has made a tactical choice not to attend this hearing. I have a discretion to proceed in his absence and, indeed, in the absence of Christine Green, who was served with the application against her, and I decided to do so whilst bearing fully in mind that fairness may dictate that there are certain issues that could not fairly be determined without hearing from Mr or Mrs Green, as the case may be.
- 7 I turn first to the application for a general civil restraint order against Mr Green. The first principal issue on this application arises out of para.4.1 of the Practice Direction which sets, as a gateway criterion for the making of a general civil restraint order, that the party against whom the order is made persists in issuing claims, or making applications, which are totally without merit in circumstances where an extended civil restraint order would not be sufficient or appropriate. I have little doubt that the current claim is totally without merit for the reason that the claimant was not entitled to issue it without obtaining the permission of a judge named on the extended civil restraint order, and therefore the claim should have been struck out automatically and without the need for the defendants to respond to it. The difficulty, however, is that I must be satisfied that the current extended civil restraint order is not sufficient, or appropriate, to guard against the conduct of Mr Green. That condition essentially captures the situation where it is not good enough to restrict a claimant in bringing claims or making applications relating to a particular subject matter because he has a propensity to act across a range of subject matters.

- 8 The present claim, as I have indicated, is directly related to the original bankruptcy proceedings. It was brought in breach of the extended civil restraint order, but I have no reason to believe that the extended civil restraint order is not sufficient or appropriate because the claimant is liable to seek to litigate on other subject matters separate from those which arose in, or are related to, the bankruptcy proceedings. Should he choose to litigate in the future on a broader front then, depending on the merits of any such future claim a general civil restraint order may prove to be justified.
- 9 Mr Heylin, who appeared for the defendants, argued that an extended civil restraint order was not sufficient, and that a general civil restraint order should be made, because the extended civil restraint order was not adequate to prompt the court office to prevent this claim from being issued, or to strike it out or dismiss it, and that a general civil restraint order would be more likely to work in this regard. That is not a basis on which I would be prepared to decide that an extended civil restraint order was not sufficient or appropriate. If this were an appropriate basis then that would be a point of general application as to the justifiability of general civil restraint orders, and I would have expected to have seen at least some authority that this was a proper basis on which to act. No such authority was cited to me.
- 10 It is true that the present claim should have been struck out or dismissed automatically without the defendants having to respond to it, if not by the court of its own motion, then upon it being pointed out by the defendants to the court that the claim should be struck out or dismissed automatically without them having to respond to it. I understand that the defendants did not take the step of seeking to ensure that the claim was struck out or dismissed without them having to respond to it, but instead, and for reasons which I do not criticise, they proceeded to file a defence and then to apply to strike out the claim. But should a claim be issued in the future, which falls within the scope of the extended civil restraint order, and without the necessary permission having been obtained, then the appropriate course would be for the defendants first to point out to the court that the claim ought to be struck out or dismissed automatically and without them having to respond to it.
- 11 The question then arises as to whether, even though I am not prepared to make a general civil restraint order against Mr Green, I should make a fresh extended civil restraint order, or extend the existing civil restraint order against him for a further period of time. I am not satisfied that it would be appropriate for me to make a further extended civil restraint order against him when the existing order has a year left to run, and where the subject matter of the present claim is directly related to that of the proceedings in which the extended civil restraint order was made. I do, however, think it appropriate to extend the current civil restraint order against Mr Green, and I do so by the maximum period of two years, for the reason that Mr Green has shown a clear propensity to continue to litigate on the subject matter of the original bankruptcy proceedings, and the defendants ought to be protected so far as possible within the regime for extended civil restraint orders against such future claims.
- 12 Mr Heylin also sought to persuade me to extend the scope of the current order against Mr Green so as to restrain him from making any complaints to a disciplinary body as, I understand, Mr Green has threatened to do against the defendants' solicitor. It is not within the terms of the Practice Direction for an extended civil restraint order or, indeed, any civil restraint order, to restrain litigants from proceeding by way of complaints to professional disciplinary bodies, and Mr Heylin frankly accepted that he could show me no authority to support his application that I should take that course. I therefore decline to do so. I would

point out, however, that there is a means by which this court could restrain Mr Green from making a complaint to a disciplinary body against the defendants' solicitors, and that is by way of an application for an injunction to that effect. I make no comment on the merits of such an injunction application but there is a mechanism by which what Mr Heylin seeks to achieve could be achieved within the rules of court.

- 13 I then turn to the application for a general civil restraint order against Mrs Green. She is not a party to the current proceedings, but I am persuaded that I have jurisdiction to make her a party and to make a civil restraint order against her. The High Court has accepted that it may take that course where a third party to the proceedings is the driving force behind the proceedings; see the judgment of Nicklin J in *Churchill Ltd v The Open College Network South Eastern Region Ltd* [2018] EWHC 1691 (QB). That reasoning, in my judgment, also applies where litigation, and applications within litigation, are a dual enterprise, and it would make no sense for one of the parties to the dual enterprise to be restrained without the other being similarly restrained. I have been shown evidence that Mr and Mrs Green have, indeed, acted in tandem in making unmeritorious applications and I would therefore accept in principle that I would have jurisdiction to make an order against Mrs Green.
- 14 Mrs Green, as I have mentioned, has already had a limited civil restraint order made against her, and the problem which the defendants have is in satisfying the gateway criteria for the more stringent orders, the extended or general civil restraint orders, which go beyond the limited civil restraint order which has been made. Mrs Green has made no applications or claims which have been brought to my attention since the limited civil restraint order was made against her, and Mr Heylin made clear to me that he did not seek to go behind the reasoning for making the limited civil restraint order against her in order to argue that a more stringent order had been justified at that stage. He relied, instead, upon Mrs Green having threatened to bring proceedings similar to the current proceedings, at the same time, and in the same terms as Mr Green had threatened to do so. However, the mere threat of bringing further proceedings is not sufficient in my judgment to satisfy the gateway criterion for the making of an extended civil restraint order which, as I have already set out, applies where a party has persistently issued claims or made applications which are totally without merit when this had not been satisfied at the time of the limited civil restraint order.
- 15 As I am not prepared to make an extended civil restraint order against Mrs Green, it ought to follow that I would not be prepared either to make a general civil restraint order against her. I do mention, however, that I would have the same difficulty in making a general civil restraint order against her as I do in relation to making it against Mr Green, which is that she has not shown a propensity to bring claims or make applications other than related to the subject matter of her bankruptcy proceedings, which would be covered by an extended civil restraint order were I willing to make one.
- 16 That is my ruling on the civil restraint order applications. I will make an order to extend the current extended civil restraint order against Mr Green, by a further period of two years, but I do not make any order in relation to Mrs Green.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge