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Case No: CH-2020-000194

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Royal Courts of Justice
Rolls Buildings
7 Fetter Lane
LONDON
EC4A 1NL

Friday, 10 March 2023

BEFORE:

MR JUSTICE MILES

BETWEEN:

RUPERT ST JOHN WEBSTER

Claimant/Respondent

- and -

(1) JOHN FRANCIS PENLEY
(2) ALISON VIRGINIA ASHCROFT

Defendants/Applicants

MR R TREVIS appeared on behalf of the Claimant/Respondent
MR O WOODING appeared on behalf of the Defendants/Applicants

APPROVED
JUDGMENT

MR JUSTICE MILES:

1. This is an application by Mr Penley and a successor firm, known as WSP (short for Winterbottom, Smith, Penley LLP), which succeeded to a firm of which Mr Penley was a partner.

2. They apply for the extension of an order made by Morgan J on 10 February 2021. That was an extended civil restraint order directed to Rupert St John Webster. It prevented him from issuing any new proceedings against Mr Penley or Ms Ashcroft arising out of "any dispute with them or concerned or connected with events which occurred in relation to The Priory, Ash Priors, Taunton, Somerset, TA4 3ND or against any solicitor/barrister associate or anyone else connected with the said matters in the High Court of Justice or in any County Court in England and Wales, or issuing any application, appeal or other process in this action or any other action in the High Court of Justice or in any County Court in England and Wales concerning any of the same matters" without first obtaining permission in accordance with the order.

3. By the order I was appointed as the primary judge to deal with any application made by Mr Webster for permission.

4. Mr Webster sought permission to appeal the order of Morgan J, but that application was refused.

5. The order of Morgan J was the third civil restraint order that has been made against Mr Webster relating in broad terms to the same matters.

6. It is unnecessary to go into the background to the underlying disputes, save to say that they ultimately concern or arise out of the will of Valerie St John Webster and the consequences of that will, which included the appointment of Mr Penley and Ms Ashcroft as executors of an estate which related in various respects to The Priory.

7. As it was put by Mr Trevis, who has appeared for Mr Webster in this hearing, Mr Webster feels aggrieved that he was originally unlawfully evicted from The Priory. Mr Trevis also explained that having left The Priory, Mr Webster moved to another property which is known as The Bondip Farmhouse and there are currently proceedings on foot relating to that property including an application by the trustees of the estate to evict Mr Webster from that property. I mention this because it features in some of the history.

8. Although Mr Trevis took me through the history relating to the matter before the order of Morgan J, it seems to me that the relevant events, for present purposes, relate to events which took place subsequent to that order.

9. Just before the order of Morgan J, Mr Webster commenced professional negligence proceedings against Mr Penley and WSP. Those proceedings related, in very broad terms, to allegations that Mr Penley or WSP had failed to act properly in the advice they had given some years previously concerning the family estate and as part of that, in relation to The Priory.

10. The defendants applied to strike out the proceedings or for summary judgment and a hearing was listed for 2 December 2021. On 2 December 2021 Mr Webster applied to adjourn that hearing. He also applied to me for permission to make the adjournment application, as it fell within the scope of Morgan J's order. I gave that permission.

11. HHJ Paul Matthews dismissed the application for an adjournment and then went on to hear the strike out application. Mr Webster applied for permission to appeal against the refusal of the decision of HHJ Matthews to grant the adjournment, and that was rejected by Asplin LJ.

12. HHJ Matthews gave judgment on 15 December 2021. He made an order on 23 December 2021, giving effect to his judgment. He ordered that the proceedings be struck out and that summary judgment be given. At paragraph 6 of his order he recorded that the claim was totally without merit.

13. When dealing with questions of costs, HHJ Matthews noted that Mr Webster's obsession with the litigation was not normal, that he was unable to process his continued failure in every attempt he takes to dress his complaint in different clothes, as in any way the result of the lack of merit, whether procedural or substantive, his behaviour in this latest round has, the judge said, been very far out of the norm. The judge also noted that Mr Webster is not naïve or ignorant and is in fact a very capable, experienced litigant.

14. While those comments were made in relation to costs, it does seem to me that they have a bearing on the view that HHJ Matthews took of Mr Webster's approach, which he described as obsessive.

15. Mr Webster sought permission to appeal from the order of 23 December 2021. On 18 May 2022 Lewison LJ refused permission.

16. In May 2022, Mr Webster applied to me for permission under the ECRO to apply for a certificate pursuant to section 12 of the Administration of Justice Act 1969 from the decision of HHJ Matthews to bring a leapfrog appeal to the Supreme Court. I refused the application for permission to make an application for such a certificate and said in my reasons that the application was totally without merit.

17. Later in May 2022, Mr Webster made a further application. There was some confusion in my mind about the nature of the application, but Mr Webster explained that he was seeking a certificate pursuant to section 12 of the Administration of Justice Act 1969 for leave to bring an appeal to the Supreme Court from my decision of 6 May 2022 and that he was seeking permission to make that application. I dismissed that application by order of 19 May 2022 and certified that it was totally without merit.

18. I have already mentioned that there is litigation concerning a property where it appears Mr Webster still resides, called Bondip Farmhouse. That litigation, again, appears to raise or involve questions about the will of Valerie St John Webster. There have been various orders made in those proceedings to which Mr Penley and WSP are not parties. An order for possession was made in January 2020. In February 2021 HHJ Matthews made an order refusing permission to appeal against

the order for possession. He certified the application for permission to appeal as totally without merit. In his reasons, he referred to the apparent overlap in the arguments being run by Mr Webster in the Bondip Farmhouse proceedings and in the proceedings which had been brought against Mr Penley relating to The Priory. In particular, HHJ Matthews pointed out that there were various contentions concerning what had happened to properties previously belonging to the Webster family and that these included allegations concerning The Priory. The order of HHJ Matthews of 1 February 2021 was taken into account as one of the totally without merit orders by Morgan J on 10 February 2021.

19. As I have said, neither Mr Penley nor WSP are parties to the proceedings concerning Bondip Farmhouse and they are not privy to all of the steps that have been taken in those proceedings. Nonetheless, Mr Webster has, since about July 2022, consistently copied the solicitors acting for WSP, in particular Ms Creech, to correspondence concerning both Bondip Farmhouse and making allegations in relation to The Priory or the matters giving rise to Mr Webster's grievances in that regard. The correspondence in question in part consists of actual and proposed submissions to the UN Committee on the Rights of Persons with Disabilities. It refers in terms to The Priory - which is described there as “the Taunton property”. It also raises complaints about the way that the properties in the family estate were dealt with and makes complaints about the treatment of the will of Valerie St John Webster.

20. The correspondence included emails being sent to the Registry of the Supreme Court. These communications included a draft order being sent to Yeovil County Court which would have given, if it had ever been made, permission to persons unknown who include, it seems, Mr Webster, to apply to the UK Supreme Court and for WSP to be joined to the application. In November 2022, Mr Webster sent another draft order which is headed "In the Supreme Court of the United Kingdom and in the United Nations," which contains a series of proposed orders, including orders concerning the estate of Valentine St John Webster. These include that a will of 2000 of Valerie Webster be declared valid and that another will of 2006 of Valerie Webster be declared invalid. It also includes proposed orders concerning title in respect of The Priory. Paragraph 7 of the order, if made, would state that costs and aggravated and exemplary damages of £7 million should be payable in 28 days by WSP and their “representing solicitors,” who include their current solicitors, to be distributed equally between two family trusts and any “purchasers” - which would seem to be a reference to purchasers of the property. Mr Webster has also, it appears, provided a detailed and lengthy submission to the UN committee complaining about various decisions and orders of the court.

21. Against this background the applicants seek an extension of the existing civil restraint order.

22. I should say that I made an order on 10 February 2023 extending the civil restraint order made by Morgan J until 7 April 2023. That was done in order to give Mr Webster the opportunity to appear by counsel and it was understood that I would approach the matter on the basis of the application and decide whether further to extend the civil restraint order.

23. The court's power to make and extend civil restraint orders is found in CPR 3.11. That provides that a Practice Direction may set out the circumstances in which the court has the power to make a civil restraint order against a party to proceedings. The procedure where a party applies for a civil restraint order against another party and the consequences of the court making a civil restraint order. Practice Direction 3C then sets out the detailed requirements for the making and extension of civil restraint orders.

24. Paragraph 3.1 of the PD covers extended civil restraint orders. It provides that an extended civil restraint order may be made by (1) a judge of the Court of Appeal (2) a judge of the High Court or (3) a designated civil judge although appointed deputy in the County Court, where a party has persistently issued claims or made applications which are totally without merit.

25. Paragraph 3.9 states that an extended civil restraint order will be made for a specified period not exceeding three years.

26. Paragraph 3.10 states as follows:

> "The court may extend the duration of an extended civil restraint order if it considers it appropriate to do so but it must not be extended for a period greater than three years on any given occasion."

27. It was common ground that for the purposes of paragraph 3.1, a party will only be treated as having persistently issued claims or made applications which are totally without merit if the party has done so on at least three occasions.

28. Mr Trevis for Mr Webster submitted that the power to extend an ECRO under paragraph 3.10 requires the court to be satisfied that the criteria in paragraph 3.1 are satisfied. He said that an order extending an ECRO under 3.10 is itself a civil restraint order and, reading Practice Direction 3C together with CPR 3.11, the power to extend must be treated as arising and arising only under Rule 3.1.

29. Counsel for the applicants, Mr Wooding, referred me to a number of authorities for the proposition that the test under paragraph 3.10 was distinct from the requirements of paragraph 3.1. He said that 3.1 was concerned with the imposition of an order whereas paragraph 3.10 was concerned with the extension of an order.

30. There have been a number of cases in which the distinction between the test in paragraph 3.10 and the test in paragraph 3.1 has been drawn. These include *Ashcroft v Webster* [2017] EWHC 887 (Ch), *AEY v AL (Family Proceedings Extension of Civil Restraint Order)* [2020] EWHC 3539 (Fam) and *Hurst v Green* [2022] EWHC 2895 (Ch). The position is also explained in note 3.11.7 in the 2022 edition of the White Book which quotes from a decision of the Court of Appeal in *Chief Constable of Avon and Somerset v Gray* [2019] EWCA Civ 1675. In that case the Court of Appeal approved the decision of the first instance judge. He drew a distinction between the test imposed for making an order in the first place and the test when the court is asked to extend a civil restraint order. The test for the latter is whether the court considers it appropriate to extend the order. The Court of Appeal approved the following statement:

> "That test must be read in the light of the criteria for imposing a GCRO in the first place since a restriction upon the party's right to bring litigation is the same during the original term of the GCRO or during its extension. In briefest outline, the question either on an original application for a GCRO or on an application for an extension, is whether an order (or its extension) is necessary in order (a) to protect litigants from vexatious proceedings against them and/or (b) to protect the finite resources of the court from vexatious waste. This question is to be answered having full regard to the impact of any proposed order upon the party to be restrained. The main difference between an original application for a GCRO and an application for an extension is that on an application for an extension, the respondent will have been restrained from bringing vexatious proceedings during the period of the existing GCRO."

31. That case concerned a GCRO but the same reasoning, it seems to me, applies to an ECRO. It shows that the same test of necessity applies whether one is considering the imposition of the order or its extension. However, the other criteria set out in the Practice Direction, which are thresholds for the imposition of an order, are not to be read into paragraph 3.10. So, for instance, there is the requirement in paragraph 3.1 that the party has persistently issued claims or other applications which are totally without merit. That requirement is not to be read into paragraph 3.10.

32. Nonetheless, the overall test to be applied is whether an order is necessary in order to protect litigants in vexatious proceedings and/or to protect the finite resources of the court from vexatious waste.

33. In any event the point is academic here as there have in fact been three totally without merit certifications on orders made since the order of Morgan J. The first was the order of HHJ Matthews of 23 December 2021 and the second and third were my orders of 6 May and 19 May 2022.

34. The question is therefore whether in the circumstances it is necessary to extend the existing order in order to protect the applicants from vexatious proceedings against them and/or to protect the finite resources from the court from vexatious waste.

35. The orders which I have just referred to, namely the order of 23 December 2021 and my two orders of May 2022, are themselves, it seems to me, evidence that Mr Webster is not prepared to behave like a normal litigant. I agree with the comment of HHJ Matthews that he has an obsessive approach to these matters and is not prepared to accept orders of the court which have gone against him.

36. On top of this, the correspondence which has taken place since July 2022 shows that he has not been prepared to accept the orders of the court in relation to The Priory or the family estates. He has provided a series of draft orders, the latest of which would result in essentially undoing the many orders of the court which have been made over well over a decade - and which would indeed involve a payment of many millions of damages by a number of solicitors' firms, including the applicants for this extension.

37. Mr Trevis explained to me that Mr Webster feels aggrieved that he considers that he was unlawfully evicted from The Priory and that no valid possession orders were ever made and that he has drawn together the litigation about The Priory with the litigation concerning Bondip Farmhouse in his mind, and that that is no doubt why he has knitted the two things together in the correspondence.

38. That may well be an explanation, but it gives no grounds for confidence that Mr Webster has come close to accepting the position in relation to The Priory. He has continued to correspond with the solicitors for Mr Penley and WSP, has continued to send them material which makes allegations of professional negligence and wrongdoing against them and which contains, albeit indirectly, threats that they should have to pay very large amounts of damages. Mr Trevis says that there is a difference between making such threats and bringing legal proceedings, but these are matters which have to be dealt with by the solicitors and in my judgment there is a very serious concern that if Mr Webster is not restrained from bringing proceedings by an extended ECRO, some of these grievances and complaints will find their way into yet further litigation. It seems to me that, for these reasons, there is a real and serious risk that unless some filter is put in place, further resources of these applicants and the court will be wasted by unmeritorious and vexatious proceedings.

39. I balance that finding against the consequences for Mr Webster of a continuation of the order of Morgan J. It restrains his access to the courts. But it is also important to bear in mind that the order does not operate as a complete bar to the bringing of proceedings or applications. It is open to Mr Webster to apply to the court for permission to bring proceedings or applications and if they are properly arguable and are not totally without merit, the court will give permission. That indeed happened in December 2021 when I granted permission to Mr Webster to apply to adjourn the strike out hearing. It is a qualified constraint and in the circumstances appears to me to be a proportionate one.

40. Mr Trevis, as a fallback submission, said that if an extended order is to be made it should be for a period less than the maximum of three years now available under the Practice Direction. It seems to me that there is some force in that submission: the question whether there should be a yet further extension hereafter can be tested by what actually happens in the future. Mr Webster may at some stage become reconciled to the orders that have been made by the court over many years and cease to challenge them through yet more litigation; and it may be that in those circumstances there would be no justification for a further order. In framing a proportionate and appropriate response, the court must of course consider the length of any extension.

41. It seems to me that an appropriate period would be to extend the order of Morgan J for a further period of two years from today. That means that there will have been an extension for more than two years in total, given my earlier order. But any court assessing the position at the end of that period will no doubt take into account the events between now and the expiry of that period.

42. So taking all of these matters in the round, the conclusion I have reached is that the order of Morgan J of 10 February 2021 should be extended for a further period of two years from today's date.

43. I will make an order for Mr Webster to pay the costs of the application. The costs are to be assessed on the standard basis. That requires the costs to be both reasonable and proportionate. I am a little troubled by the overall amount of the costs bill as it seems to me that this was a comparatively straightforward application albeit it has taken over half a day. It also seems to me that Mr Webster has succeeded in persuading me that the length of the extension should not be the full period sought by the applicants and that some element of the costs should be reflected in that degree of success on the part of Mr Webster. It also looks to me as though at least some of the work done on documents may well have predated the application for the continuation of the ECRO itself, so for example, there are elements for considering the section 12 applications and other steps and it looks as though the amounts spent on the application itself are rather more limited. Doing the best I can and including the need for such costs to be maintained at a proportionate level, it seems to me that the amount that should be awarded is £14,000.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge