Neutral Citation Number: [2021] EWHC 3023 (QB)

Appeal No. 71 of 2021
Claim No. H02LV580

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
HIGH COURT APPEAL CENTRE MANCHESTER

1 Bridge Street
Manchester
M60 9DJ
11th November 2021

Before:

MR JUSTICE FORDHAM

- -

Between:

SYLVIA DEBENHAM-SCHON	**Appellant**
- and -	
ANCHOR HANOVER GROUP	**Respondent**

- -
- -

The Appellant in person
Vilma Vodanovic (instructed by Walker Morris) for the **Respondent**

Hearing date: 11/11/12

Judgment as delivered in open court at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. This is an application for permission to appeal. The case came before me on the papers and, having read them, I made an order on 3 November 2021 exercising my power pursuant to CPR 52.4(1) to direct that there be an oral hearing to determine whether to grant permission to appeal and whether to continue the stay of the warrant of execution. I made provision in that order for the Appellant to state a preference for a remote hearing. Invoking that mechanism, she requested that today's hearing be a remote hearing by BT Meet Me, to promote her ability to access the court. I am satisfied that that mode of hearing was necessary and appropriate. The open justice principle has been secured. The case and its start time, and the mode of hearing, were all published in the cause list accessible publicly by the "courtserve" website. Also published was an email address usable by any member of the press or public wishing to observe this public hearing. Miss Vodanovic attended on behalf of the Respondent and addressed me briefly on four topics to which the Appellant had the opportunity, which she took, to assist me by way of submissions in reply.

2. The appeal arises from an order made by Recorder Rahman ("the Judge") at Liverpool County Court on 5 August 2021. That order gave the Respondent possession of a property known as Flat 32 at an address in Liverpool, the Respondent not to enforce by warrant of possession before 1 September 2021. The Appellant tells me that the date of 1 September 2021 was linked to an operation which she was expecting to take place within the near future. The order went on to deal with an injunction against the Appellant which had been made by Recorder Grundy on 21 December 2020 the duration of which continues until 4pm on 21 December 2022. The Judge ordered the Appellant to pay the Respondent's costs of the proceedings, to be assessed on the standard basis if not agreed. The Judge directed that a transcript of his judgment be provided to the parties, that being in the public interest. The order recorded the Court's finding that the Appellant's behaviour had satisfied Grounds 12 and 14 of Schedule 2 to the Housing Act 1988 and that there was no reason to apply the extended discretion under section 9 of that Act.

3. The transcript of the judgment was subsequently made available to the parties pursuant to the Judge's Order. By an Order dated 7 September 2021 HHJ Wood QC, upon considering the papers and noting the Appellant's Appeal Notice, and recording that the papers were unlikely to be considered by a High Court Judge (who alone could address the question of permission to appeal) before the start of the legal term in October 2021, extended the stay of the warrant of eviction pending consideration of the appeal papers by a High Court Judge. My Order of 3 November 2021 extended the stay of execution of the warrant of possession to today's hearing.

The judgment

4. The Judge's judgment is a detailed one. The judgment is the necessary focus of consideration of the question of permission to appeal. It is therefore important that I pay attention to the key passages within it, in considering whether to grant permission to appeal in light of the written and oral submissions made by the Appellant. The judgment extends over 17 pages single-spaced and contains 70 paragraphs. Among the features of the judgment are the following. The Judge recorded that the hearing

had lasted three days with two days of evidence. As the Appellant also explained to me, she gave live evidence and there were two other witnesses who also gave live evidence. There were four volumes of documents comprising the trial bundle with a total of 1,197 pages plus additional documents handed up during the trial. Additional documents included a witness statement from the Appellant dated 1 August 2021 and a handwritten list of some 34 videos (with a short written summary of those). The Judge recorded that a number of videos were played in the courtroom and that he had viewed other videos including 12 videos provided by the Respondent. By way of background, the Judge recorded that the papers before him included materials relating to a nine-day possession hearing in March 2018 involving a different landlord and culminating in a 102-page judgment of Recorder Earlam. The Judge also recorded that there had been a three-day hearing before Recorder Grundy, culminating in a 25-page judgment and the injunction of 21 December 2020 which featured in the Judge's Order (and to which I have already made reference).

5. The Judge made very clear in his judgment that: "This is not a judgment I actually want to give; it is not a judgment I hoped I would have to give"; that "the reality is there are no winners and losers in this case"; that it "is a sad case indeed, and one which I wish could have been avoided". But that: "[u]nfortunately, despite the best efforts of those involved, and I attribute no blame one way or the other, it has not proved possible to resolve the issues without the need for me to determine the matter on the evidence". The Judge explained that the Appellant is a 78-year-old woman resident in an independent living retirement scheme, having begun her assured tenancy there on 28 October 2018. He explained that the application for the injunction granted by Recorder Grundy, pursuant to the Anti-Social Behaviour Crime and Police Act 2014, had been preceded by a community protection notice in connection with anti-social behaviour which notice had been issued on 12 November 2019. The notice seeking possession had been served on 4 February 2021 and the claim for possession issued on 18 March 2021.

6. It was necessarily a key part of the Judge's function in determining the issues at the trial that he grapple with relevant questions of fact and relevant features of the evidence. It is clear from a reading of the judgment that the Judge addressed in a conscientious way the issues that were being raised. By way of one example, the Judge recorded an allegation which had been made about the Appellant deliberately blocking communal toilets. It was being said that that deliberate act by her had led to consequences including a resident falling. On that topic, the Judge explained that he accepted the Appellant's evidence. He explained that he was not satisfied that she had blocked the toilets deliberately. To give a second example, the judgment addressed allegations of behaviour at a bus stop in relation to residents who were in a barber shop. As to that, the Judge concluded that insufficient evidence had been provided to be satisfied that the alleged incident had taken place.

7. The judgment makes clear that the Judge was very well aware of the respects in which the Appellant was submitting that she was seriously wronged, by the actions of others. On that topic the judgment includes the following passage:

> ***Lest it be said I have not considered the behaviour of others, I have done so and I say this in relation to that: I do not doubt that others in that scheme have behaved badly towards [the Respondent]. I do not say that such behaviour is justified or excused by the fact that they were provoked by [the Appellant]'s behaviour; they should have known better, as***

> ***indeed should have [the Appellant]. She believes they should be up here and be facing eviction but the reality is she is the catalyst which has generated this particular situation. The fact is there are no injunctions against their behaviours because those behaviours are not regarded as being sufficiently anti-social to justify any injunction. What I will say is, and perhaps this is a lesson to be learned by [the Appellant], that a little give-and-take on her part would have gone a long way to resolving this situation. An attempt to engage with [the Respondent] might well have gone some way to addressing her concerns.***

8. As I have explained, the Judge – inescapably - needed to address factual questions relating to the Appellant's conduct. It is important that I record some of the key passages in the judgment by which the Judge addressed those matters. I record them, recognising that they are strenuously challenged by the Appellant in her application for permission to appeal, and recognising that I will need to return to the key themes and points which are raised in that application for permission to appeal. I have not lost sight of any of that in recording the way in which the Judge dealt with the factual position relating to her conduct in key passages within the judgment. The judgment included the following passages on that topic:

> ***I do not for one minute believe that the [Appellant]'s actions are malicious, and are intended to hurt other people. She undoubtedly, as she says to me, wants to live a quiet life, but the problem is, in her attempt to live a quiet life, she has insisted others comply with her rules and her ways of living. If they do not do so she reacts in a way which is unreasonable, disproportionate, unjustified, and will not listen to anyone else in an attempt to try and resolve the situation.***

Referring to a dispute which had arisen out of the smell of air freshener or other substances, in the context of the Appellant's asthma, the Judge said this:

> ***[H]her reaction has been entirely unreasonable, disproportionate and unjustified. Instead of using proper means to try and resolve the issue, she has taken matters into her own hands and behaved in a way which has caused antagonism with fellow residents and has clearly caused a nuisance and annoyance and clearly, in my view, amounts to anti-social behaviour…***

The Judge said:

> ***The position seems to me to be this. The [Appellant] is fiercely protective of her health, fiercely protective of her cat, Puddycat, who sadly died on 27 December 2020. When she perceives there to be anything that interferes with that, she simply reacts or more properly, retaliates, and thinks she is entitled to do so. I am afraid she is not; that is simply not acceptable behaviour in a communal living situation, one cannot simply go round to a neighbour's flat, on the corridor next door to you or otherwise, move their belongings, or take them away. Each and every allegation set out within the [Respondent's] Scott Schedules I accept has been proved, proved not least because the [Appellant] admits she did interfere with them but that her defence is that she was justified. She was not, I am satisfied, justified in her behaviour which was again a clear breach not only of the injunction but also of her tenancy agreement, and this amounted to anti-social behaviour.***

The Judge said this:

> ***the [Appellant] has a campaign against anyone who smokes, wears perfume, uses … air freshener spray … Or objects to anything in relation to her cat at that time. Unfortunately, I have heard no evidence to suggest or even hint that the [Appellant] will cease from interfering with others' belongings; that nuisance is one that will carry on, in my judgment.***

The Judge also said:

> ***It is also clear that throwing items out of the window is part of the pattern of behaviour of the [Appellant]; she admits, brazenly …, throwing Dettol contaminated with, I think, some food, onto the window of Flat 6 below because, she put it, 'Dettol wouldn't stick on the window; it just rolled off the window'. She said to me in terms, 'So I added some food and yoghurt into it so it would stick on the window and leave a message'. This was in the context of her long-running complaint about someone smoking in the flat below which in fact is permitted. I am afraid that her behaviour was completely unacceptable and amounts to a clear breach, not just of the tenancy agreement, but clear evidence of anti-social behaviour. Perhaps more importantly in my view, it demonstrates someone who pays no heed to a court order. I am satisfied that, on the balance of probabilities, no matter what her denials might be, that the yoghurt or rice pudding or other dairy products thrown onto the vehicle as set out in the Scott Schedules was the fault of [the Appellant], along with the other spraying of liquids and each of the allegations within those two Scott Schedules that post-date the injunction I find proved. The [Appellant] has either admitted the allegations or as in the case of the yoghurt/dairy products I find the allegations proved to the requisite standard. There is in addition video evidence corroborating the continued spray of liquids.***

The Judge found:

> ***It is… abundantly clear, that every possible avenue of avoiding possession proceedings has been attempted by [the Respondent], all to no avail.***

He explained that:

> ***I have no alternative, in light of my judgment… but to grant possession immediately to [the Respondent].***

The appeal

9. The Appellant has filed detailed grounds of appeal accompanied by a considerable volume of materials. Strong themes within her written grounds are: that the process before the Judge was an unfair one; that false claims were being made against her; that relevant matters were being ignored; that previous proceedings and orders were wrong and indeed fraudulent; and that the timing of the eviction was unjustified. In her grounds of appeal, she invites the Court to grant permission to appeal and subsequently to allow 7 days of court hearing time for the case to be heard, in its entirety, and by reference to all of the evidence. She submits: that the claim against her arose from vengeful action by her previous landlord, and the police, against whom she had made complaints; that the message was spread within the housing scheme that she was a "paranoid person" and to be dealt with as such; that her privacy and confidentiality were breached and that lies were told; that she has been lied against and treated disrespectfully; that false and manipulated videos were used against her; that key aspects of her defence and counterclaim were ignored; that the Respondent breached and abused its responsibilities owed to her; and that other tenants including leaders of a 'gang' of tenants breached their own responsibilities and acted unlawfully, to harm her. The Appellant in her grounds asks this Court to "annul the case completely", recognising "the criminality which it is, its gross abuse of the judicial system", and in any event to delay the eviction date and an "appeal trial" date until after surgery and her recovery from it. She also asks that the Court investigates what she says are false reports made by two psychiatrists.

10. In her oral submissions today, the Appellant has urged me to grant her permission to appeal, and to make directions that the appeal should take place after a medical operation which itself cannot take place until after an awaited medical examination

and report. She emphasised her wish, and the need, that this Court should consider – for the purposes of permission to appeal – all of the documents that she has provided and everything that she has written. In developing her oral submissions, key themes included the following, among others. She addressed me on the topic of her own conduct. She submits that what has been said about her conduct has been twisted and fabricated and involves fiction, perjury and contempt. She addressed me in relation to the conduct of others. She describes that conduct in terms which include criminality and sadism.

11. In the context of the conduct of others, she specifically drew my attention to the way in which she had filled out her "defence form" dated 9 April 2021, to which the Judge referred in the judgment (although there is a typo in the date which he gave it). The Appellant showed me how the defence form box asks whether any counterclaim is being raised against the landlord. She ticked the box "yes" and filled the space with a detailed manuscript description which she has helpfully subsequently typed up for ease of reading. The paragraphs of that counterclaim set out the basis on which she submitted that compensation should be awarded for a number of acts including: stalking; harassment; character assassination; crimes under the housing mental health Acts; racist abuse; disability hate crimes; animal cruelty. There are also claims for compensation for physical injuries, compensation for damage to property including clothing, and in respect of a number of further acts. In submitting to me that the Judge "didn't deal with anything" and that he "didn't pay attention", the Appellant submitted that the counterclaim was not dealt with by the Judge.

12. A further distinct theme of the oral submissions developed by the Appellant at today's hearing related to a diagnosis of paranoia. The Appellant submits that the purported diagnosis in that respect, to which two "shameful reports" (as she describes them) contain reference, is at the root of much of what has unjustly and unlawfully followed. She told me that medical documents and police actions have led to a "shameful" and unjustified stigmatising of herself, which is at the heart of what she submits has gone wrong in this case and has resulted in unjust recognition of what has been said to have been the actions of herself and others, by contrast with what she submits is the factual truth.

Discussion

13. Having considered the points made by the Appellant in writing and orally today, I can see no properly arguable ground of appeal in this case. In my judgment, there is no realistic prospect that this Court would overturn the Judge's judgment or his order.

14. The Judge plainly grappled with matters of fact and evidence, and reached findings of fact on that evidence, in the light of all the materials including the live evidence and the videos. As the Appellant, in my judgment rightly, recognised, the points in the "counterclaim" were points which were connected to what she was submitting to the Judge on the central issues of the conduct on her own part and the conduct that she was submitting had taken place on the part of the Respondent's officers and on the part of other tenants. It is clear that the Judge did not regard as substantiated by the Appellant factual allegations being made by her, whether relevant to the question of acts of wrongdoing done by her, or relevant to the question of acts done by other residents. I record this: it was the Respondent's position on this application for permission to appeal that because no pleaded counterclaim in damages, accompanied

by a fee, was before the Judge at the trial, it would remain open to the Appellant to make a claim for damages for personal injuries or damage or loss to her property, if she maintains that she has a sustainable course of action. None of that would, however, constitute a basis for refusing the order for possession, in light of the unimpeachable findings of fact which, beyond argument, were plainly open to the Judge.

15. Nor can I accept that the Judge arguably went wrong in the way in which all he addressed the medical evidence. Again, it is important to have in mind the passages in the judgment which addressed the relevant considerations. I will record the Judge's conclusion, recognising that the Appellant strongly contests it. The Judge said this:

> ***I am satisfied, as was Recorder Grundy, that the [Appellant] has a disability within the meaning of the Equality Act 2010 and, as [counsel for the Respondent] properly concedes on behalf of the [Respondent], that much of the conduct giving rise to the present proceedings is a direct result of, or related to, her condition, namely paranoid personality disorder. It is right that I also point out that I have seen nothing to suggest any change in the circumstances regarding the [Appellant's] capacity; she clearly has capacity to conduct the present proceedings and I have seen nothing to doubt that and have seen no evidence to suggest that her capacity is in question.***

Not only was that approach, to the evidence before the Judge, plainly open to the Judge, but more importantly it is clear that the Judge focused directly and straightforwardly on the key factual questions about conduct. He plainly did not proceed from any evidence, still less any contested evidence, to reach factual conclusions based on any medical diagnosis. Instead, he evaluated the evidence and made determinations as to what in fact had happened, who had done what, and what the character and quality of those actions were. One clear example, which demonstrates this point beyond doubt, is that (as I have explained) there are clear examples in the judgment where the Judge accepted the Appellant's evidence and did not find substantiated that she had acted in certain ways that were being alleged. The Judge linked his findings of fact, as to conduct, to the direct evidence which he had heard and seen. Nor can I accept, even arguably, that the Judge was led into relevant error through "manipulation" or "fabrication", for example, of video evidence.

16. In the light of those conclusions, I am not going to grant permission to appeal in this case.

Continuing the stay

17. One topic which was raised and with which I now need to deal concerns the question of the stay, and continuation of the stay, in light of the refusal of permission to appeal. I was addressed on both sides on the topic of what this Court should do if it were not granting permission to appeal. The Appellant's submission was that, if that situation arose, there should be a stay for two months, or more, in light of what she says about the need for a medical report, an operation and recovery from that operation. Ms Vodanovic for the Respondent resists any stay. She says that the question of allowing time was a matter for the Judge and was addressed by the Judge. She submits that there is no medical evidence which supports the court granting any stay or continuation. She emphasises that, in any event, there would need to be a period of at least 14 days because of the need to apply for a new appointment in relation to the

bailiff. She accepted that steps of that kind could be taken in parallel with a continuation of the stay if the court were to grant it.

18. In my judgment, the appropriate course for this Court to take – in principle and, in any event, as a matter of my judgment and discretion – is to mirror the period which the Judge recognised as appropriate when he made the possession order that he did. His order was dated 5 August 2021 and he considered in the circumstances of the case that it was appropriate to direct that the Respondent was not to enforce possession by warrant of possession before 1 September 2021. That allowed a period of 26 days. I am satisfied that it is appropriate for me to allow a period of time which is a mirror image: 26 days from this determination which finally disposes of the question of any appeal. I am satisfied that no further stay is justified in circumstances where I am refusing permission to appeal. It is necessary in my judgment that the possession order should now be capable of execution and closure achieved, in light of the invocation of the right to seek permission to appeal which has, as a result of my judgment, been unsuccessful.

Post-judgment factual materials

19. I asked both parties whether materials which each of them has supplied, by way of communications with the Court, as to matters post-dating the Judge's judgment were, in their submission, relevant to my function. In my judgment, no such materials – at least in the context and circumstances of the present case – were of material assistance on the question of permission to appeal. The Appellant's position was that she is able to identify continued actions which she characterises as a continuation of everything that has gone before in this case. She submits, on that basis, that evidence was capable of shining a light on the question of whether the Judge was arguably wrong in the way in which he dealt with the issues in his judgment. In my judgment, to raise materials and seek to invite this Court to accept a characterisation – in one direction or another – of what is said to have happened 'on the ground' cannot possibly affect the question of permission to appeal. There is, in my judgment, no realistic prospect that "fresh evidence" could lead to this Court overturning the Judge's judgment and order. I am in no position to make findings of fact as to what has or has not happened, or who was responsible for it, in the period since the Court below gave judgment. This is not a fact-finding hearing. Nor does it need to be a fact-finding hearing.

Communications with the court (CPR 39.8)

20. The final topic with which I am going to deal in this judgment concerns communications with the court. This is not a topic which is capable of affecting the analysis on the question of permission to appeal or on the question of continuing the stay. Ms Vodanovic was quite right when she submitted that this topic, to which I am now turning, is not one which has material influence for the purposes of those two issues. But I regard it as a topic of some importance. It is, moreover, a topic which I specifically raised in my Order of 3 November 2021. I interpose, in that regard, that: I referred to CPR 39.8; I directed the Respondent's solicitors to supply a paginated bundle of all emails between the Respondent's solicitors and the Court (whether this Court or the county court) after 4.8.21 relating to this case, in which the Appellant was not cc'd"; and I stated in my observations in the order that: "Any explanation can and should be provided to the Court and the Appellant".

21. What happens in the High Court when an appeal judge is given papers relating to a proposed appeal is that the file is provided to the judge. The judge is thus in a position to see what is being said to the Court by the parties. In the present case there have been a number of emails sent by the Appellant, who on the face of it has been careful – on each occasion – to 'copy in' at least one of the solicitors acting for the Respondent. That is to her credit. What I saw in the file were some emails which had involved both sides, and some emails to the Court from the solicitors acting for the Respondent which did not. An example of an email which did involve all the parties was the email which the Judge himself sent on 7 September 2021. He wanted the parties to be made aware that he had received the transcript and intended to review it in the near future, in order to approve for provision to the parties the transcript of the judgment (for which he had made a direction in his order). A series of emails from the Respondent's solicitors to the Court dealt with topics to do with the speed with which the Court was dealing with the known application from the Appellant for permission to appeal. The Respondent was (naturally) anxious to know the position and wanted to achieve promptness in relation to determination of the application for permission to appeal, not least in the context of the stay and any enforcement. There is absolutely nothing wrong with any of that. But what is very striking is that the decision was clearly taken not to include the Appellant's email address on the 'cc list' for those communications. That is a cause of concern for at least two reasons. The first is that communications relating to the timing of the Court dealing with the application for permission to appeal were communications with the Court which would have consequences for the timing for the enforcement of possession action against the Appellant. The second is that some of the communications expressly relied on what was being said by the Respondent's solicitors to be the position 'on the ground'.

22. I am going to refer to those matters, in circumstances where the Respondent's solicitors have had the opportunity to consider their position in relation to CPR 39.8, and where the position, taken in a letter to the Appellant (5.11.21), which they maintain before me today is that there was no contravention of CPR 39.8 on the basis that the email communications were "purely … administrative".

23. In considering that submission I have had regard to the following contents of the emails to the Court. In one email, there was this:

> ***… our client is understandably keen for matters to be progressed in view of the ongoing situation at its sheltered housing scheme and the impact it is having on its residents (the police have made multiple attendances there since the start of September).***

In another, this:

> ***Hopefully we will have some more substantive news soon as the police are having to make repeated attendances at our client sheltered scheme due to the continual problems being caused by the [Appellant].***

In another, this, in seeking:

> ***…… an update on the status of the appeal … I can then better manage expectations of our client, the police and all those affected at our client sheltered housing scheme.***

Finally, in an email from the Respondent's solicitors to my clerk – when it was known that the papers were being placed before me – which drew attention to the email chain:

> ***… you will see from the chain below that I have been seeking updates with regard to the status of this appeal, in view of the situation on the ground at our client's sheltered housing scheme, following the grant of the attached forthwith possession order of 5 August.***

24. In my judgment, those contents cannot properly be described as being "purely … administrative". I agree with the Appellant that she should have been copied in on emails being sent to the Court; firstly, because they were advocating a prompt and expeditious dealing with a matter which would accelerate the date on which she had to give up possession; but secondly because they included the Respondent's side of things as to events "on the ground", including by reference to the Appellant's conduct, and the police. It is not difficult to test the position. Suppose the Appellant had been legally represented by a firm of solicitors. I find it frankly unthinkable that solicitors could send communications of that kind while making the decision not to copy in their opponent's legal representatives. It is regrettable, in my judgment, that the opportunity was not taken, to recognise that the emails ought, under the rules, to have been cc'd to the Appellant. It is because that opportunity was not taken, and because the position taken has been maintained, that I have addressed the issue and dealt with it here, so that any necessary lessons can be learned.

Conclusion

25. For the reasons I have given, I am refusing permission to appeal but will continue the stay of the warrant of execution for the period to which I have referred, giving a precise date. The Order I made was: (1) permission to appeal is refused; (2) the stay on the warrant of eviction is extended to 6 December 2021 after which the Respondent may enforce the possession order of Recorder Rahman (5.8.21) by warrant of possession; (3) no order as to costs.