

Neutral citation number: [2022] EWHC 2135 (Ch)

Case No: BL-2020-001419

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

Royal Courts of Justice
Strand
London
WC2A 2LL

Monday, 25 July 2022

BEFORE:

MR JUSTICE ADAM JOHNSON

BETWEEN:

JONATHAN DAVID ROWLAND
DAVID JOHN ROWLAND

Claimants

- and -

KEVIN GERALD STANFORD

Defendant

MR T GRANT QC and **MR A McLEOD** (instructed by Forsters LLP) appeared on behalf of the Claimants

MR STANFORD appeared in person

JUDGMENT
(As Approved)

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1. MR JUSTICE ADAM JOHNSON: On 10 June 2021 Master Bowles sitting in private made an Order directed against the Defendant, Mr Kevin Gerald Stanford, requiring his attendance at the Law Courts in Maidstone on 3 August 2021 before District Judge OmoRegie, in order to provide information about Mr Stanford's means and other information (including in particular documents identified in the schedule to the Order) needed to enforce two earlier Orders for costs made by the Court in January 2021 and April 2021 respectively.
2. I have been shown an Affidavit of service made by a Mr Cesar Sepulveda dated 29 July 2021 confirming that on 7 July 2021 Mr Sepulveda served, amongst other things, a copy of the Order of Master Bowles on Mr Stanford at his home address in Kent. According to Mr Sepulveda, although he drew attention to the penal notice on the Order of Master Bowles, and whilst the Defendant did not request any travelling expenses, he would not, says Mr Sepulveda, actually admit his identity at the time. Instead, he said he was not the Defendant, Kevin Gerald Stanford, but the man now “*known as Kevin*”, although he went on to say that he was authorised to accept service on behalf of the Defendant.
3. This rather odd exchange is characteristic of an approach described by me in an earlier Judgment in these same proceedings: see [2022] EWHC 1436 (Ch). It makes it clear, to my mind, that the person served by Mr Sepulveda was in fact the Defendant, Mr Stanford. Consequently, I am entirely satisfied that he was properly served personally with the Order of Master Bowles.
4. Certain other matters support the view that Mr Stanford was aware of the Bowles Order and of the requirement that he attend for examination on 3 August 2021. On 21 July 2021 the Claimants' solicitors received a document entitled “*Promissory Note*”, which indicated on its face that it would mature and be payable together with accrued interest on 30 September 2021. The Promissory Note identified the principal amount payable thereunder as roughly £146,000. That corresponds in effect to the amount of the two costs' Orders at that stage payable by Mr Stanford.
5. Then in an email dated 30 July 2021, sent on behalf of Mr Stanford, his representative Mr Jackman suggested that any and all alleged financial obligations to the Claimants

had been discharged, and therefore offered the view that the hearing scheduled for 3 August 2021 was unnecessary.

6. On 2 August 2021 Mr Jackman sent a package of documents to the Court Office in Maidstone, copied to the Claimants' solicitors. Among the documents supplied was a letter headed "*Notice of Conditional Acceptance.*" This set out certain demands which Mr Stanford appeared to require to be complied with as conditions of his attendance at the examination then fixed for 3 August 2021. Another document supplied was described as an Affidavit of Mr Stanford. This referred at paragraph 5 to the costs Orders then outstanding to the Claimants having been discharged by the Promissory Note I have mentioned. It then went on to refer to Mr Stanford's belief that that being so, there were no grounds of contempt by the failure of anyone to attend the examination scheduled for 3 August.
7. It seems to me, as Mr McLeod pointed out in his submissions, that these documents are significant in two senses. First, in the sense that they indicate Mr Stanford had indeed received a copy of the Bowles Order and was fully aware of what it required. The second point is that they indicate a degree of awareness on Mr Stanford's part that the consequences of his non-attendance might well involve a finding of contempt against him. In his document referred to as an Affidavit, he resisted that conclusion on the basis of the Promissory Note, and, it seems, also on the basis of his Notice of Conditional Acceptance. As regards the first of these, however, his Promissory Note did not operate to discharge the debt owed by him to the Claimants. As to the second, i.e. the Notice of Conditional Acceptance, again, as I have held in connection with other matters involving Mr Stanford, it is not open to him, relying on the alternative system of justice to which, at least at one stage, he professed adherence, to resist the effect of Orders made by this Court.
8. In any event, the evidence is that Mr Stanford did not appear as required before the Court in Maidstone on 3 August 2021. In consequence, an Order was made by District Judge OmoRegie requiring the matter to be referred for consideration under CPR 71.8.

9. After some delay an Order was eventually made on 9 May 2022 by Leech J in the Chancery Division of the High Court. He gave directions for evidence to be served by the Claimants and by Mr Stanford if he so chose. The Claimants' evidence in the form of Mr Shacklady's Tenth Witness Statement was served on 18 May 2022. Mr Stanford served no evidence of his own in accordance with the deadline set by Leech J.
10. Following that, on 7 July 2022, I made a further Order directing the matter to come on for hearing today in connection with another matter in which Mr Stanford is involved. Again, I gave an indication that Mr Stanford, if he wished to, could serve further evidence and could seek permission to rely on it at the hearing before me. No evidence was in fact served by Mr Stanford. Mr Stanford has been present throughout the hearing today and has heard the submissions made by Mr McLeod. He offers no resistance as such to the Order now sought against him, but he has offered his apology to the Court.
11. The question is, what should now happen in light of this background. The Claimants invite the Court to make a suspended committal order under CPR 71.8(2).
12. The proper approach was explained by the Court of Appeal in *Broomleigh Housing Association Limited v Okonkwo* [2010] EWCA Civ 1113. I have considered the various options identified in that case and I am satisfied to the criminal standard, that is to say beyond a reasonable doubt, both that Mr Stanford was served with Bowles Order and that his failure to attend his examination was intentional. In those circumstances, it seems to me I should proceed to make a suspended committal Order, having regard to the background I have described.
13. As to my finding that the failure to attend was intentional, this depends on the matters I have already drawn attention to. Mr Stanford was plainly aware of the Bowles Order and, as it seems to me, must have been aware of the possible effects of non-compliance. He simply chose not to attend, relying instead on the Promissory Note and other correspondence he had sent to the Court. None of that, however, provided any reasonable excuse for non-attendance and no alternative reasonable explanation has been offered. Indeed, Mr Stanford has served no evidence in response to any of the invitations that he do so.

14. For all those reasons, and being satisfied otherwise that the requirements of CPR 71.4 and 71.5 have been duly complied with, I will make an Order in the form sought by the Claimants, in line with the approach adopted by Arnold J in *Ticketus LLP v. Whyte* [2014] EWHC 3232 (Ch). I am satisfied that a period of 28 days is appropriate in the circumstances of this case, as it was in that case. I propose therefore to make an Order that Mr Stanford be committed for 28 days but with the Order suspended on the usual basis. I will now discuss further, to the extent necessary, the appropriate form of Order.

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This transcript has been approved by the Judge