



Neutral Citation Number: [2022] EWHC 777 (QB)

Case No: QB-2022-00663

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 April 2022

Before:
SIMON TINKLER
(sitting as a Deputy Judge of the High Court)

Between:

MESHARY ALENEZY
- and -
(1) SHERGROUP LIMITED
(2) MR MARK WILLISHER

Claimant
Defendants

Andrew Mace of 9 Stone Buildings (instructed by **AMZ Law**) for the **Claimant**
Chris Royle of St. Philips Chambers (instructed by **Feltons Law**) for the **Defendants**

Hearing date: 7 March 2022

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 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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SIMON TINKLER

This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 1 April 2022.

Simon Tinkler sitting as a Deputy Judge of the High Court:

1. This judgment follows a Return Date Hearing before me on 7 March 2022. That hearing followed the grant of an interim injunction (the “**Injunction**”) by Bourne J at a hearing on 1 March 2022 (the “**Initial Hearing**”). The Injunction required the Defendants to return by 4pm on 3 March a highly valuable and high specification Range Rover which cost over £120,000 (the “**Vehicle**”) owned by the Claimant and of which the Defendants had taken possession against the Claimant’s will on 22 February 2022.
2. The Second Defendant is an Enforcement Agent authorised by Norwich County Court. In this case he was acting in some way on behalf of a Claire Sandbrook who is a High Court Enforcement Officer, although she is apparently based in Florida and has taken no active part in these proceedings. The Second Defendant was the person who took control of the Vehicle from the Claimant and had the Vehicle taken away. The role of the First Defendant is not entirely clear. In the skeleton argument from the Defendants’ Counsel it is described as “the administrative service organisation which administers Mrs Sandbrook’s enforcement work”. In the same skeleton argument Counsel says that the First Defendant has no authority to take control of goods, yet in the High Court Enforcement Notice the First Defendant is listed as the “enforcement agent or officer” who should be contacted in relation to the Vehicle once it had been taken from the Claimant. It is also not clear if the Second Defendant is employed or contracted to the First Defendant or if they are somehow independent. In any event, after the Second Defendant took control of the Vehicle, the First Defendant then was apparently the entity deciding whether or not to return it. For ease of reference, I will refer to the Defendants jointly throughout, except where the actions were those very specifically of a particular Defendant, and I shall refer to them both as Enforcement Agents (“enforcement agents”) even though that is not, perhaps, technically the case.
3. The facts underlying the case were, by the time of the hearing, largely no longer disputed. The Vehicle had also, eventually, been returned to the Claimant so the question of whether the injunction should remain in place or be discharged was not relevant. The issue remaining was who should bear the costs of the proceedings. The Claimant said that the proceedings were necessary because the Defendants had acted unlawfully in taking the Vehicle, and then failing to return the Vehicle until the court ordered them to do so, and the Defendants should therefore bear the costs. The Defendants on the other hand say that the Claimant used the wrong court procedure to force them to return the goods, and that had the court known the full legal position the Injunction would not have been granted, and that they should therefore have their costs paid by the Claimant.

Background

4. The Claimant has a brother (“B”) who owed money to certain creditors pursuant to County Court judgments. The First Defendant sent a Notice of Enforcement to B on 27 December 2021 at a flat where he lived (the “**Premises**”) in relation to those judgment debts. A copy of the writ of control was not provided but it is not disputed that one was issued in relation to those judgment debts owed by B.

5. On 22 February 2022 the Second Defendant went to the Premises. There was a car park underneath the block of flats with multiple car parking spaces. He was, it seems, accompanied by a film crew who were making a TV programme about his work as an enforcement agent.
6. The Second Defendant discovered the Vehicle parked there and clamped it. It is commonly accepted that the Defendants had not undertaken any checks at all with DVLA as to the ownership of the Vehicle. Counsel for the Defendants was in his submissions unable to point me to any evidence in the possession of the Second Defendant at the time the Vehicle was clamped that indicated the car belonged to B.
7. The Claimant came to the car park, saw the clamp and told the Second Defendant the car was his. He showed the Second Defendant a copy of the DVLA V5 form on his telephone which showed the Claimant as the registered keeper of the Vehicle. He also showed the Second Defendant a copy of an order form in the Claimant's name ordering a car of exactly the same, unusual, high specification and the same exterior and interior colour as the clamped car. The Second Defendant however refused to release the clamp, and instead instructed the Claimant to hand over the keys. The Claimant did so, albeit under protest and it seems the police were called at some point, though the evidence before me does not make it clear by whom, or when, or what involvement they had. The car was driven outside and loaded onto a lorry belonging to, or at least, under the control of, the First Defendant. The Second Defendant then gave the Claimant a Notice of Intention to Sell the Vehicle which named the First Defendant as the contact in relation to the Vehicle. This was all apparently filmed for the TV programme.
8. The Second Defendant that evening wrote a "note" of the events, in which he said that the Claimant had not claimed the vehicle was his. The Second Defendant subsequently provided this note to his solicitor and claimed it accurately reflected what had happened. It is now admitted by the Second Defendant that his note was a false record of the events.
9. On 23 February the Claimant instructed solicitors, who wrote to the First Defendant seeking immediate return of the Vehicle. The letter was stated to be a letter before action and included details of the Vehicle, referred to the evidence as to why it belonged to the Claimant (being the evidence already shown to the Second Defendant) and required the Defendants to confirm they would return the Vehicle.
10. They requested a response by midday on 24 February. After the deadline had passed, a senior manager at the First Defendant replied by email to the Claimant's solicitors asking for details of:
 - i) The type of vehicle and its registration number;
 - ii) The name and address of the person who was writing to them (or possibly the name and address of the Claimant; the email is unclear)
 - iii) The grounds of the claim and supporting evidence
11. That information had already been set out in the letter to which the First Defendant was replying or (in the case of the underlying ownership evidence) had already been shown to the Second Defendant. The First Defendant did not offer any undertaking not to sell

the Vehicle or to return it if it belonged to the Claimant or even acknowledge that the Claimant claimed to own the Vehicle.

12. At this stage the Claimant applied to court for an injunction to order that (a) the Defendants could not sell the Vehicle and (b) the Defendants had to return the Vehicle to the Claimant. The application was made on Monday 28 February and was heard at 2pm on Tuesday 1 March. It was effectively held without notice as the First Defendant and the Second Defendant were only served with the notice at 11.40 that day.
13. Bourne J ordered the Defendants not to sell the Vehicle, and to return the Vehicle by 4pm on 3 March. The court order gave the Defendants liberty to apply to vary the Injunction. The Return Date Hearing was fixed for 8 March.
14. The Defendants then appear to have instructed solicitors, and there was correspondence between the solicitors over the following days.
15. In the correspondence the Defendants, through their solicitors:
 - i) Denied that the Claimant had claimed the vehicle belonged to him;
 - ii) Denied that the Claimant had shown them adequate documents to evidence his ownership of the Vehicle and asserted that “at all times [the Defendants] reasonably believed that the Vehicle was the property of [B]”.
 - iii) Claimed that B had told the Second Defendant that B was the owner of the vehicle;
 - iv) Asserted that it was “inappropriate for the vehicle to be delivered up”, notwithstanding the court order requiring them to do so. They offered to agree not to sell the vehicle if the Claimant paid the full value of the Vehicle into court; and
 - v) Asserted that the claim should have been made under CPR Part 85 and referred to the “requirement” to pay the value of the car into court.
16. The Defendants did not return the Vehicle by 4pm on 3 March. At this stage the Defendants were in breach of the Injunction and the Claimant’s solicitors told the Defendants’ solicitors that they would apply to court for committal. The Defendants then returned the Vehicle in the afternoon of 4 March.
17. On 4 March the Defendants’ solicitor said that he had now reviewed body cam footage of events on 22 February. Having done so, he stated that the Second Defendant now admitted that his “note” of events on 22 February was false. In particular he confirmed that the Claimant had indeed told the Second Defendant prior to the removal of the Vehicle that the Claimant was the owner. The Defendant’s solicitor also acknowledged that the Claimant had shown the Second Defendant documents from the DVLA and from the dealer who sold the Vehicle to the Defendant. Throughout the proceedings the Claimant’s solicitors were seeking disclosure of the body cam footage to verify what happened on 22 February but the Defendants refused to provide it.

18. The Defendants continued to claim in correspondence, and at the Return Date Hearing, that there was a genuine dispute as to ownership of the Vehicle and that the Claimant should pay the value of the Vehicle into court before the court made any decision.
19. The Return Date Hearing then took place on 8 March. Although listed for one hour, the hearing took most of the day.

Relevant Legislation

20. The law relating to the seizure of goods by enforcement agents was codified by The Tribunals, Courts and Enforcement Act 2007 (the “Act”). The Act gives certain powers to enforcement agents and subjects them to certain obligations. The relevant sections in relation to goods that have been seized by an enforcement agent but are claimed to belong to third parties are in Part 3 (ss62-65), and Schedule 12.
21. The Act sets out in s62 that
 - “(1) Schedule 12 applies where an enactment, writ or warrant confers power to use the procedure in that Schedule (taking control of goods and selling them to recover a sum of money); and
 - (2) The power conferred by a writ or warrant of control to recover a sum of money, and any power conferred by a writ or warrant of possession or delivery to take control of goods and sell them to recover a sum of money, is exercisable only by using that procedure.”
22. In other words, where a person is using powers conferred by a writ or warrant of control the person using the powers must use the procedure in Schedule 12. The majority of Schedule 12 prescribes the way in which persons using the powers must act. Paragraph 10 of the Schedule states that “An enforcement agent may take control of goods only if they are goods of the debtor”. Paragraph 60 of Schedule 12 sets out certain consequences when a third party says that goods taken by an enforcement agent belong to him and not to the debtor. Paragraph 60 does not set out a procedure under which the third party can reclaim his goods, nor limit the statutes under which the third party can bring a claim for interference with his goods. The Paragraph in essence just provides certain safeguards for the third party whilst any dispute is resolved at court.

Legal arguments

23. The Claimant says, however that Paragraph 60 does not apply here because the Defendants took his goods unlawfully. As that is a question that has general relevance outside this case I have considered the point in detail.
24. Schedule 12 applies “where a person [1] makes an application to the court [2] claiming that the goods taken control of are his and not the debtor’s”. The Claimant has in this case made an application to court. The question is therefore whether the Vehicle is “goods taken control of [that] are his and not the debtor’s”.
25. The definitions that are relevant for these purposes are:
 - “control” (except in Paragraph 5(4)(a)) means control under an enforcement power;
 - “controlled goods” means goods taken control of that—

- (a) have not been sold or abandoned,
 - (b) if they have been removed, have not been returned to the debtor (unless subject to a controlled goods agreement), and
 - (c) if they are goods of another person, have not been returned to that person;
26. It was not disputed for these purposes that the Defendants had an enforcement power to take control of the assets of B. The Vehicle was taken by the Second Defendant in purported exercise of that power. As a matter of fact the Defendants clearly had taken physical control of the Vehicle.
27. The Claimant asserted that although the enforcement agent had taken physical control the goods were not "taken control of" for the purposes of Paragraph 60 because the goods were taken unlawfully. The Claimant says that Paragraph 10 requires an enforcement agent to only take goods if they belong to the debtor, which the Vehicle did not, and so they were taken unlawfully. The Claimant, in essence, says that the definition of "control" should be read as meaning "control under an enforcement power **exercised lawfully**".
28. The Claimant's interpretation would have two consequences. The first is that the protections and obligations under Paragraph 60 would not apply to the goods if they were taken unlawfully. The second is that CPR Part 85 would not apply to these proceedings. I do not agree with the Claimant's interpretation, for reasons which I set out below.
29. The purpose of Paragraph 60 is to address disputes about goods taken by an enforcement agent. If the Paragraph only applied to goods taken properly then it would be entirely redundant as in that circumstance there would not be a valid third party claim. Paragraph 60 applies, on the simple construction of its wording, to any goods of which control has been taken under an enforcement power, irrespective of whether such control has been lawfully taken. There is nothing in the wording that limits it to goods taken lawfully. Counsel for the Defendants referred me to the judgment of Lane J in *Hamilton* in *Hamilton v SSBEIS and another [2021] EWHC 2647 (QB)*. In that case Lane J set out in paragraphs 67 to 99 (inclusive) the principles of statutory interpretation as they applied to Schedule 12 and those principles apply equally here. Paragraph 60 is plain, on its face, and I need to consider if there is any reason to decide that interpretation is not correct.
30. Paragraph 60 sets out certain safeguards if a third party claims that an enforcement agent has taken control of goods which belong to him. The main safeguard is that the goods cannot be sold once court proceedings have been started. Once an application to court has been made in relation to goods of which control has been taken, then a sale can only take place if the court orders or permits it and, generally, only if the third party has not made the "required payment". In other words the third party can prevent a sale either by making the required payment, or by persuading the court that an order for sale should not be made. That is as far as Paragraph 60 goes.
31. Paragraph 60 therefore largely operates for the benefit of the third party. As soon as the third party makes an application to court then the sale of controlled goods is prohibited without the need for any court hearing at all. Without that Paragraph, or if a third party

does not apply to court, then the enforcement agent would be entitled to sell the goods, and then deal with the proceeds as set out in Paragraph 50 of the Schedule, first by paying the third party, then by applying the balance to discharge the obligations of the debtor and costs.

32. Collectively, those provisions put the third party in a better position than if Paragraph 60 did not apply. It would, in my view, be an unexpected conclusion if Paragraph 60 gave protection to goods lawfully taken but did not give that protection to goods taken unlawfully.
33. It was further suggested, by the Claimant, that Paragraph 60 only applies where the goods are jointly owned by the debtor and the third party, and that it does not apply when the goods are solely owned by the third party. The Claimant based this argument on his view that Paragraph 60 replaced the old “interpleader” procedure, and made no further changes to the law. The Claimant’s interpretation would require me to read Paragraph 60 as applying to “goods taken control of [which] are **partially** his and not **exclusively** the debtor's”. I can see no reason on the face of the Paragraph, or in the purpose behind it, to limit the protections given by Paragraph 60 to goods that are co-owned by the third party and the debtor. In my view Paragraph 60 should be read as applying to “goods taken control of [which] are **wholly or partially** his and not **exclusively** the debtor's”.
34. In *Hamilton* at paragraph 122 Lane J said: “It is important to note that the Paragraph 60 process is intended to be the sole means by which third party claims to controlled goods are determined”. In that case the key question at issue was whether goods had been abandoned and not whether Paragraph 60 applied to goods taken unlawfully. Paragraph 60 sets out protections and restrictions that apply when such claims arise. In my view, Lane J’s observations reinforce the conclusion that Paragraph 60 applies to goods which are either wholly or partially owned by a third party, rather than leaving wholly owned goods somehow excluded. The interaction of Paragraph 60 and such claims is that “all third party claims to controlled goods are subject to Paragraph 60”.
35. Counsel for the Claimant referred me to the judgment in *Rooftops South West Limited and others v Ash Interiors and others [2018] EWHC 2799 QB* in which Master Davison said “the Schedule [12] was not intended to establish an exhaustive and self-contained code of rights and remedies applicable whenever enforcement rights have been deployed or exceeded.”. That is entirely accurate. That observation does not, however, mean that Schedule 12 does not apply to controlled goods. It means that a claim under, for example, Torts (Interference with Goods) Act 1977 continues to apply to goods taken by an enforcement agent, but the provisions of Paragraph 60 also apply to any such claim.
36. Neither *Rooftops* nor *Hamilton* is authority for the Claimant’s view that this court has previously decided that Paragraph 60 only applies to goods of which control has been lawfully taken, or that it applies only to goods partially owned by the third party.
37. I can see no reason to depart from the clear meaning on the face of Paragraph 60. I am therefore satisfied that Paragraph 60 applies when an enforcement agent has, unlawfully, taken control of goods in breach of Paragraph 10 because the goods are entirely the property of a third party. There may, of course, be circumstances where Paragraph 60 does not apply to goods thought to be controlled goods, such as where the

person taking them was not actually an enforcement agent but that is not the situation here.

38. There were other points raised in relation to the effects of Schedule 12. One of the (many) assertions made in correspondence by the solicitors for the Defendants was that “[the Defendants] have an absolute defence to any claim for damages as at all times they reasonably believed that the [Vehicle] was the property of the named debtor”. I find that, as a matter of fact, the Defendant cannot have had any reasonable belief that the Vehicle was the property of B, and the repeated assertion by Counsel and the solicitors that they had such a belief did not add to the credibility of the Defendant’s case. Indeed, it reinforced my view that the Defendants and their legal team had completely lost sight of the fundamentals of this case, which were that the Second Defendant had wrongfully, and obviously wrongfully, taken the Vehicle. I also find as a matter of law that the assertion by the Defendants’ solicitor is fundamentally inaccurate. There are no limitations in Schedule 12 to which I was referred which limit the liability of an enforcement agent to a third party for breach of Paragraph 10 or Paragraph 60. There are limitations on, or defences to, enforcement agent liability in Paragraphs 63, 64 and 66. Those were not relevant here, however, as those Paragraphs protect the enforcement agent in relation to sale of the goods and the distribution of proceeds, or from claims by the debtor. In any event they only apply when the enforcement agent has not had notice of a third party claim (and in this case the enforcement agent had received such notice) or had a reasonable belief, which in my view he did not in this case.

CPR Part 85

39. I turn now to the Court Procedure Rules and in particular the argument by the Defendant that the Claimant used the wrong procedure to seek an injunction and that the injunction is therefore abusive.
40. CPR 85.2(1)(b) says that Part 85 applies to all claims “under Paragraph 60(1) of Schedule 12 to the Act”. There is, in a strict sense, no actual claim “under” Paragraph 60 as that Paragraph does not set out a procedure for claims; it sets out protections and obligations that arise if there is an application to court in relation to controlled goods. In my view the correct reading of Part 85.2(1)(b) is that it applies to all “claims in relation to goods to which Paragraph 60 of Schedule 12 to the Act applies [“controlled goods”]”
41. It is in my view, therefore, clear that this claim should have been brought under CPR Part 85. It was not. What are the consequences of this? That breaks down into two key questions. Firstly, what is the impact of the pre-action procedure in Part 85? Secondly, once the Claimant had started an action in court, what was the effect, if any, of Part 85 not being used?
42. The pre-action phase is intended to identify the issues and allow the parties to resolve as many as possible, if not all, matters in dispute prior to court proceedings and to achieve the overriding objective. The requirements in Part 85 are more stringent than the general pre action protocol in, for example, requiring the third party to give notice of the dispute within 7 days.

43. In this case Counsel for the Claimant says that he has complied with Part 85 pre-action rules in their entirety, or certainly in substance. He says that even if this was treated as a claim under Part 85 he would have been entitled to apply for an order requiring the Defendants to return the Vehicle.
44. The Defendants, on the other hand, say that the Claimant did not start the claim under Part 85 and that therefore the Claimant was not entitled to apply for the relief it sought, and that all costs of this case should be borne by the Claimant. I do not agree with the Defendants on this point. I will expand below but in short the Claimant had complied with the pre-action requirements of Part 85, had issued its application in accordance with Part 85.3 and had sought an order the court was entitled to make under Part 85.10.
45. The rules for applying for an order in relation to controlled goods are set out in Part 85.4. The Claimant gave very clear written notice to the Defendants on 23 February, through their solicitors, as to (a) the goods in question (b) to whom they belonged and (c) the grounds of dispute. The only part of Part 85.4 that could be said not to have been complied with was the giving of a formal address for service. As the Defendants had a letter from the solicitors stating they were acting for the Claimant, the lack of a formal confirmation that this was the address for service cannot be said to be material. Or put another way, in these circumstances I do not see that the court would have refused the Claimant permission to seek the relief they sought for that reason alone.
46. The Defendants are also completely missing a fundamental point in relation to the Part 85 pre-action rules. The rules are to ensure that any disputes are clearly identified. Those rules make it clear that if there is no dispute then the matter should end there and the goods should be returned without any need for the court to be involved. The rules do not mean that enforcement agents are entitled to manufacture a dispute where there is no doubt that a third party owns the relevant goods in order, for example, to try and force the third party to make payments into court. Nor are the rules designed to create procedural loopholes to allow enforcement agents to act “with impunity”, as Master Davison put it in in *Rooftops*. If they do, then they should expect to suffer the consequences in court and in costs.
47. The reasons that the Claimant issued its application for the Injunction following provision of all the information required under Part 85 pre-action rules on 23 February are, in my view, that
 - i) the Defendants took no steps to check the ownership of the Vehicle;
 - ii) the Defendants took control of the Vehicle despite clear evidence presented to the Second Defendant that it belonged to the Claimant, and little or no evidence it belonged to B;
 - iii) the Defendants had failed to return the Vehicle as the pre-action rules in Part 85 clearly envisage when there was no genuine dispute.
 - iv) The Defendants had failed to return the Vehicle as the pre-action rules in Part 85 clearly envisage when there was no genuine dispute.
48. The Defendants did not engage with the Claimant to ascertain to whom the Vehicle belonged, or offer any confirmation that they would return the Vehicle if it did belong

to the Claimant, nor had they taken steps to ascertain whether the creditor disputed the third party's claim as required of them by the rules in Part 85.4.

49. There might not be specific rules in Schedule 12 or in the CPR that require the Defendants to take the actions in (i) and (iv) above but if the Defendants do not take such actions then clearly that increases the risk that they are (i) wrongfully taking ownership of goods belonging to a third party in breach of Paragraph 10 and (iv) wrongfully failing to return goods belonging to another and to which they have no legal rights.
50. Counsel for the Defendants asserted that if the Claimant had used the words "Part 85" in its letter of 23 February then the Defendants would not have taken any steps to sell the Vehicle. Even if that was the case, it did not address the fundamental request in the court application which was for the return of the Vehicle. In any event, based on the Defendants' behaviour, I have serious doubts as to whether Counsel's assertion is correct.
51. I now turn to the position when Bourne J considered the matter at the Initial Hearing. I have found that
 - i) the Defendants had taken control of the Vehicle despite little or no evidence that it belonged to B, and plentiful and strong evidence that it belonged to the Claimant; in my view there could not have been a genuine belief held by the Defendants that the Vehicle belonged to anyone except the Claimant.
 - ii) having taken control of the Vehicle the Defendants served a Notice of Intended Sale;
 - iii) the Claimant had complied in substance with all the pre-action requirements of Part 85;
 - iv) The Defendants had not complied with the pre-action requirements in Part 85.4(2) requiring them to ask the creditor if the creditor had a claim to the goods (and in relation to which the creditor would have confirmed that he had no claim on the goods);
 - v) there was no bona fide dispute as to ownership of the Vehicle and the Defendant should have returned it as (a) there was no genuine dispute to which paragraph could have 85.4(4) could have applied and thus paragraph 85.6 requiring return of the Vehicle applied and (b) as a matter of general law it had no right to the Vehicle;
 - vi) the Defendants had not engaged with the Claimant's request to return the Vehicle, nor confirmed that if the Vehicle did belong to the Claimant they would return it
 - vii) Part 85.3 specifically requires any claim under Part 85 to be made by an application in accordance with Part 23, which it seems to have been; and
 - viii) Part 85.10(1)(g) permits the court to make any order that the court considers appropriate, which would include the order the court actually made.

52. Counsel for the Defendants made a number of points about matters he said should have been put before Bourne J. He says that at the Initial Hearing Bourne J was not told that this claim should have been brought under Part 85, or even that this was an arguable point. He was not told that the Claimant's letter of 23 February did not contain a formal address for service. He was told that the Vehicle had been "dragged" away when it had in fact been driven away then lifted by crane onto a lorry. The statement of truth on the witness statement from the Claimant's solicitor had been signed by the relevant individual using the firm's signature and not his own.
53. I have asked myself the question as to what Bourne J would have decided if the application had been made in the form it was, but that at the hearing the matters set out in the paragraph 51 had been brought to his attention. There is inevitably an element of speculation in that, but I have put myself in the position that he would have been in with that information and ignoring matters that subsequently came to the court's attention.
54. It seems clear to me that he would have reached the same decision, namely to issue an injunction in the terms sought, and directed that Part 85 applied to the claim from then on. The Second Defendant had clear evidence that the Vehicle belonged to the Claimant when he took the Vehicle. The Defendants had been told in clear terms that the Vehicle belonged to the Claimant and that the Claimant would go to court to seek its return if the Defendants did not hand it back. The need to issue an order to prevent the Defendants from continuing to hold the Vehicle unlawfully would have outweighed the fact the claim did not refer to Part 85, and the (in my view, minor) procedural defects. Furthermore, I consider that the court would have ordered the claimant not to sell the Vehicle. Even though, as a matter of law, the Defendants were not allowed to sell the Vehicle, they had not complied with numerous legal obligations thus far, and a court order would have the added force of a penal notice to emphasise that they must comply.
55. Furthermore even if I am wrong, then the most likely course of action would have been an adjournment whilst those matters that concerned Bourne J were addressed. In my judgment, based on the way the Defendants continued to attempt to justify their actions, I consider it highly unlikely that they would have returned the Vehicle before any adjourned hearing, even though it should have been obvious to them that they had taken it in breach of Paragraph 10 as it belonged to the Claimant, and that in the absence of a genuine dispute as to ownership they had no legal right to retain it. They would, based on their correspondence and their disregard for the court order actually made, have continued to claim that ownership of the Vehicle was in dispute and that the Claimant should pay the value of the Vehicle into court. There would therefore have been another hearing at which the court would have been asked by the Claimant to order the return of the vehicle, which in my judgment it plainly would have done as there was no bona fide dispute as to its ownership.
56. That leads me to conclude that, even if the Initial Hearing had been adjourned, the end result would have been the same and a court hearing would have been necessary. Fundamentally, the correspondence is clear evidence that the Defendants were not going to return the Vehicle until this court ordered them to do so; they were going to dispute the ownership of the Vehicle come what may. The purpose of creating that dispute was, based on my reading of the correspondence, to try and obtain leverage over the Claimant by seeking a payment into court from him.

57. Counsel for the Defendants said that the Defendants' email of 23 February put the Claimant on notice that Part 85 was the correct, and indeed only, Part of the CPR to be used. For the reasons set about above I have concluded that even if they are right it would not affect my decision. I will say though, with all due respect to Counsel, the email of 23 February contains no such reference. If it was intended to put the Claimant on notice that a request to return goods that did not contain the words "CPR Part 85" would be treated as invalid then it should have said so. The Defendants should not use a reply to a letter before action as a means to try and avoid their clear duties not to take or retain the goods of third parties unlawfully.
58. The Defendants also claim they are experienced in claims in relation to third party goods. If that is the case, it should have been obvious to them that this was a claim under Paragraph 60 in relation to goods belonging to a third party, irrespective of whether the letter contained the words Paragraph 60 or Part 85, or not.
59. Finally, in submissions there was some discussion as to whether the Second Defendant should have taken control of the Vehicle if he believed it to belong to B, as B was, to the Second Defendant's knowledge, at that time a bankrupt. That issue did not need to be addressed as it was not relevant to the costs question in this case.

Costs consequences

60. In my view all costs incurred up to and including the Initial Hearing before Bourne J were incurred because the Defendants failed to comply with their obligations only to take goods belonging to the debtor. They took control of goods that belonged to a third party. There were no reasonable grounds put before me to justify them doing so. It was obvious on 22 February that the Defendants should not take control of the Vehicle. I do not know if the Second Defendant was motivated by the presence of the TV crew, or was indifferent as to who owned the goods or thought that if he took goods belonging to the debtor's brother then he would gain leverage over the debtor. None of those would be proper motives for an officer of the court to take control of goods belonging to a third party.
61. I now consider what happened between the granting of that Injunction and 4 March, namely:
 - i) the Defendants were served with an injunction returning the Vehicle and giving permission to apply to vary the injunction if the Defendants wished;
 - ii) the Defendants did not apply to vary the Injunction;
 - iii) the Defendants' solicitor wrote asserting that his clients would only comply with the Injunction if the Claimant waived any claim to costs;
 - iv) the Defendants failed to comply with the Injunction and did not return the Vehicle by the time ordered by the Court;
 - v) The Claimant's solicitors wrote to the Defendants saying they would institute committal proceedings for contempt of court;

- vi) the Defendants then applied to vary the Injunction, which of course still remained in full force and binding on the Defendants; and
 - vii) in correspondence the Second Defendant falsely asserted, through his solicitor, that the Claimant had not claimed the vehicle was his.
62. All costs incurred from the Initial Hearing to 4 March were in my view caused by the Defendants failing to comply with a court order, their continued defence of their actions by making false assertions about what happened on 22 February and by the Defendants trying to manufacture a “dispute” in order to try and make the Claimant pay money into court.
63. The situation changed when the Defendants applied to vary the injunction (late on 3 March) and (on 4 March) admitted through their solicitor that the Vehicle belonged to the Claimant and that the Second Defendant’s version of events had been false. Having made that admission, they returned the Vehicle, rendering their application to vary the injunction irrelevant. The Defendants still continued to assert, however, that they were not liable for any costs, and indeed that the Claimant should pay their costs. That dispute meant that the hearing on the Return Date Hearing went ahead to address the issue of costs.
64. It follows from my conclusions above that the Defendants should on 4 March have accepted liability for costs incurred by the Claimant. They did not do so, and proceeded to argue their case on the Return Hearing Date in relation to all costs. The Defendants have failed in those arguments and therefore should bear the costs of that hearing as well. The exception to that is that on the Return Hearing Date some time was spent arguing about whether Paragraph 60 and Part 85 applied. I have found that they applied, and it should have been obvious to the Claimant that they applied. That, however, had no actual consequence on the outcome, nor on the need for the Initial Hearing nor on the need for the Return Date Hearing.
65. I now need to consider whether the costs should be on the standard basis, or the indemnity basis as sought by the Claimant.
66. In this case, the Defendants do not have clean hands. The Second Defendant is an officer of the court. He took the Vehicle when he was clearly not entitled to do so and knew, or should have known, that he was not. The Second Defendant made a false note of the events of 22 February and provided it to his solicitor, knowing that his solicitor would use it in relation to potential court proceedings. The First Defendant is also acting on behalf of an officer of the court. Both Defendants refused to engage in any pre action discussion about the ownership of the Vehicle in order to avoid court proceedings, and failed to return the Vehicle on 23 February when it should have been extremely clear that there was no genuine dispute as to its ownership. Both Defendants wilfully failed to comply with a court injunction, instead seeking to use a refusal to comply as leverage to avoid paying costs. Even at the Return Date Hearing the Defendants, through their solicitors and Counsel, claimed that they had a “reasonable belief” that the Vehicle belonged to B. That assertion was in reality without any foundation. I am therefore awarding costs on an indemnity basis up to and including 4 March
67. The Defendants went some way towards addressing these issues on 4 March but still continued to pursue unnecessary points, and completely failed to accept responsibility

for the issues they had caused. In my judgment, the Defendants are very close to being liable for costs on an indemnity basis from that date but on balance, and also taking account of the unsuccessful arguments in relation to Part 85 and Paragraph 60, I will only award costs on the standard, rather than indemnity basis, from 4 March.

68. In summary, I award costs on an indemnity basis against the Defendants up to and including 4 March. I award costs against the Defendants on the standard basis from and including 5 March. Those costs are to be assessed if not agreed. The injunction requiring the return of the Vehicle is also discharged as the Defendant has complied with its terms.
69. The costs of the Claimant to the Return Hearing Date were some £21,500 and I order that a payment of £15,000 on account towards those costs be made within 21 days of the date of the order. I heard some submissions from Counsel for the Defendants as to which Defendant should bear the costs. Those arguments were not fully heard, and so I make no order as to the split of costs between the Defendants, but I grant each Defendant liberty to apply to determine the split if it cannot be agreed.
70. I now turn to the behaviour of the Defendants and their legal advisers.
71. The Defendants in this case have behaved with cavalier disregard for their obligations as officers of the court. The appointed High Court Enforcement Agent, a Mrs Claire Sandbrook, seems to have delegated her powers to the Second Defendant and the First Defendant but has allowed them to act in a way that is deeply inappropriate. She is apparently based in Florida and whatever degree of supervision is being exercised from there is clearly inadequate. In *Rooftops* Master Davison considered the position in relation to other enforcement agents under the “control” of Miss Sandbrook and said:

“A Writ of Control is not to be regarded as a kind of blank cheque or a licence to act with impunity....it is astonishing and concerning that [the Defendants], a body and an individual acting under statutory licence, should have done so. Taken together with the multiple breaches of procedure and the absence of proper records that I have referred to, the apparent lack of recognition or insight on the part of the persons concerned, the lackadaisical and dismissive attitude of [the Defendant] to these proceedings and the fact that what oversight the third defendant exercised with respect to [the Defendant] was and is apparently rendered from Florida, there are grounds to consider terminating the third defendant's authorisation to act as an enforcement officer under Regulation 12 of The High Court Enforcement Officers Regulations 2004. I will refer the case to the Senior Master for consideration of that course.”

72. I have very similar concerns as Master Davison and will refer the conduct of Mrs Sandbrook, the First Defendant and the Second Defendant to the Senior Master for consideration, although it maybe that on a full examination it is not the conduct as High Court Enforcement Officers that is in question and a different method of review of conduct may be required.

73. This court ordered the First Defendant and the Second Defendant to return the Vehicle by 4pm on 3 March. They did not do so. There was a penal notice attached which stated:
- “Any person who knows of this order and does anything which helps or permits the respondents to breach the terms of this order may also be held in contempt of court and maybe imprisoned, fined or have their assets seized.”
74. The Defendants’ solicitor, Mr Felton Gerber, was aware of that penal notice. He set out in black and white that his clients would comply with the court order only if the Claimant dropped its claim for costs. A solicitor is an officer of the court and Mr Felton Gerber was under an explicit duty in the injunction not to help or permit the respondents in breaching its terms. There is always a degree to which robust correspondence is acceptable. His correspondence, however, crossed the line of acceptability, and did not demonstrate insight into the seriousness of complying with a court order. I have asked for, and received, submissions from him on this. He has apologised to the court and the Claimant, and expressed genuine remorse for what he said in correspondence. He has, in particular, apologised for conflating the issues of (a) compliance with the injunction, which was an absolute obligation, and (b) resolving outstanding matters in dispute, which necessarily involved negotiations. He says that it was a fast moving situation and that he took his eye off the ball. It was indeed a fast moving situation, but legal representatives must take steps to ensure that at all times they comply with court orders and their professional duties. This is the case even, and perhaps especially, during times of pressure and fast moving events. I am, however, satisfied that Mr Felton Gerber has reminded himself of the importance of complying with court orders, especially by officers of the court, and is wholeheartedly apologetic to the court and all parties. I have therefore decided not to refer the matters raised in his correspondence to Tipples J, as the *Hamid* judge, for consideration.