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CO/353/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/11/2021

Before :

MR JUSTICE KERR

Between :

(1) TERENCE WILLIAM NORMAN
(2) GEORGIA LEE NORMAN

Claimants

- and -

(1) YONI ADLER
(2) GAIL WILKINSON

Defendants

Mr Anthony Metzger QC and Ms Hannah Hinton (instructed by **Paul Martin & Co**
Solicitors) for the **Claimants**

Mr Sam Thomas (instructed by **Pennington Manches Cooper LLP**) for the **Defendants**

Hearing date: 28 October 2021

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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MR JUSTICE KERR

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand down is 10.30am on Friday, 12 November 2021.

Mr Justice Kerr :

Introduction

1. The claimants, a married couple, ask the court to set aside an order made on the papers by Sir Ross Cranston on 21 September 2021. He refused the claimants' application for permission to bring contempt proceedings against the defendant police officers arising from their part in obtaining a warrant on 9 April 2019 at Chelmsford Crown Court.
2. The warrant was issued by His Honour Judge Gratwicke, Honorary Recorder of Chelmsford, on the evidence of the second defendant, acting under the direction of the first defendant. The warrant authorised Essex police to search the claimants' home in Essex and certain nearby office premises, and to seize certain property found there.
3. The defendants and other officers suspected the claimants of involvement in money laundering. However, this suspicion has turned out to be wrong. After the warrant was executed on 16 April 2019, when the claimants (and their son) were arrested, no further action was taken and the property seized was eventually returned. The claimants are, and remain, of good character.
4. The Chief Constable of Essex Police has conceded in judicial review proceedings that the warrant should be quashed and all seized property returned. Supperstone J made an order on 4 February 2020 giving effect to that concession. He also gave directions for payment of £3,500 agreed damages to the claimants' son and granted permission for the judicial review to continue as a claim for review of the arrests of the present claimants.
5. Sir Ross Cranston reasoned that the claimants could not make a strong prima facie case that statements made to the Crown Court to obtain the warrants were deliberately intended to mislead the judge and known by the makers to be false. Material non-disclosure or mistakenly providing wrong information, even carelessly, is not enough. Permitting contempt proceedings would not justify the resources required and would not further the overriding objective.

Facts

6. The claimants have for some years run a business in the financial sector. It is known as "Blue Tractor". There are various Blue Tractor companies. I asked the parties to provide an agreed form of words describing the business of Blue Tractor. Helpfully, they obliged:

"Blue Tractor was created to develop novel intellectual property ("IP") that would allow it to obtain exemptive relief from the SEC [*Securities and Exchange Commission*] in the USA to trade in non-transparent exchange traded funds on USA markets. Exemptive relief was granted for Blue Tractor which allows it to licence its novel IP to third parties who trade on the NASDAQ [*National Association of Securities Dealers Automated Quotations*] and NYSE [*New York Stock Exchange*]."
7. At a late stage during the hearing before me, I was told that a Divisional Court comprising Dingemans LJ and William Davis J (as he then was) had given a substantive judgment on 18 December 2020 in the judicial review claim brought by these claimants

and their son: see *R (Norman) v. Crown Court at Chelmsford and Chief Constable of Essex Police* [2020] EWHC 3456 (Admin).

8. I gratefully adopt paragraphs 7-16 of Dingemans LJ's lead judgment in that case for the history leading up to and including execution of the warrant:

"7. In February 2019 Essex police received intelligence suggesting that Mr Norman was running an investment scheme called "Blue Tractor" which was a vehicle for fraud. In addition on 4 September 2018 a financial institution had reported to a law enforcement agency that concerns had been raised about a deposit of cash made into a bank account by one person for a friend to purchase shares in Blue Tractor (UK) Limited ("Blue Tractor UK"). Essex police made inquiries which showed that Mr Norman had not been employed since 2008 and had paid no income tax since 2008. Bank accounts associated with him and his companies had a turnover in excess of £1 million. A personal bank account had a balance of £202,000 and a turnover in the period February 2018 to February 2019 of £640,000. Companies controlled by Mr Norman were Blue Tractor Europe Limited ("Blue Tractor Europe") which was dormant, and Global Financial Solutions Limited ("GFS"), Blue Tractor UK and Towergate Consultants Limited ("Towergate") which had no turnover. Vehicles with an estimated value of £1 million were registered at Mr and Mrs Norman's home which was called Ropers Farm situated in Essex. Ropers Farm was a substantial property with no mortgage. A website for Blue Tractor UK and other internet reports suggested that financial algorithms were being developed.

8. Detective Sergeant Adler (now Detective Inspector Adler) ("DI Adler") decided to apply for search warrants. On 19 March 2019 an application was made to Her Honour Judge Lynch QC in the Crown Court at Chelmsford for a search warrant under the special procedure in schedule 1 of PACE. The warrant was issued but it was noticed that there was an error in the address for Ropers Farm and a new warrant was applied for and granted on 25 March 2019 by HHJ Lynch.

9. On 27 March 2019 DI Adler set out in a policy decision dated 27 March 2019 a decision to arrest "all adult members of family present at Ropers Farm on the day of the warrant for the money laundering offences". The rationale was recorded as:

"there is sufficient grounds to suggest that all adult members of the family [Mr and Mrs Norman, their adult sons and adult daughters] have benefitted from the offences. All live on the property and the vehicles are in their names. There are huge amounts of financial transactions through the various accounts and very little in the way of HMRC declarations, certainly not consistent with their wealth. So as not to prejudice the criminal investigation and allow them to collude prior to interview, I believe that it is justified to arrest and interview as soon as practicable which will be on the day. This will also ensure that the we can satisfactorily seize items subject to PACE conditions and that the criminal investigations can run side to side with any possible HMRC investigation".

10. On 2 April 2019 an application was made to His Honour Judge Gratwicke for a fresh warrant under section 352 of the Proceeds of Crime Act 2002 ("POCA"). However the draft warrants had the wrong heading and he refused the application, and discharged the earlier warrants.

11. On 9 April 2019 successful applications were made for search and seizure warrants issued pursuant to section 352 of the Proceeds of Crime Act 2002 ("POCA") in respect of two properties being: (1) Ropers Farm; and (2) offices at 4 Hadleigh Business Centre, 351 London Road, Benfleet, Essex ("the offices") by the Crown Court at Chelmsford.

12. At some stage it was decided to arrest only Mr Norman on the execution of the warrants.

The arrests

13. The warrants were executed on 16 April 2019 at 7.30 am at Ropers Farm. DI Adler pressed the intercom on electric gates at the end of the drive at Ropers Farm. There was a delay and the intercom was answered and DI Adler reported that he had a warrant to search the premises. There was then a further delay of several minutes and the gates were opened. Mr and Mrs Norman's son was located in a bungalow and he was arrested. Mr Norman showed DI Adler around the house and opened a safe containing money and he was arrested at 0737 hours on suspicion of fraud and money-laundering. PC Bridge and DS Robson found carrier bags containing cash concealed in bushes at the back of the garden. Footmarks were said to be noted in the dew on the lawn leading from the kitchen across the garden to the gate at the end of the garden near to the bushes. A pair of ladies' trainers were found which were wet and with grass cuttings, with the heels turned down which was said to suggest that they had been put on and taken off in a hurry. Mrs Norman was the only adult female who was up and seemed to have dressed hurriedly. DI Adler and DC O'Toole suspected that Mrs Norman had placed the bags of cash in the hedge to conceal them from police officers conducting the search. At 0910 hours Mrs Norman was arrested on suspicion of fraud and money-laundering.

14. Various documents, cash, jewellery, a piano and vehicles were seized. It was common ground that the seizure of the jewellery, piano and cash was not covered by the terms of the warrant. Mrs Norman made a complaint that she was advised to remove jewellery on arrest so that it could be safely left in the house, and it was then seized. About £100,000 in cash was found in the house and in the bushes.

15. Mr Norman was interviewed at the police station at 1328 hours. Mr and Mrs Norman's son was interviewed at the police station at 1701 hours. Mrs Norman was interviewed at the police station at 1828 hours.

16. Attempts were made to enforce the warrant at the offices. The offices were in fact the address of a firm of chartered accountants who provided accountancy services to Mr Norman and the companies. The police were refused access by the accountants because it did not appear that the police had even realised that the offices were the accountants' offices."

9. The claimants relied on certain further factual points concerning the procedures adopted when obtaining the warrant and the information provided to the court under the signature of the second defendant. I will return to these points in considering the parties' submissions.
10. The Divisional Court considered the claimants' claim for a declaration that their arrests had been wrongful and for damages for false imprisonment. The claimants had attempted unsuccessfully to have the case transferred to the County Court. The Divisional Court heard the matter on 1 December 2020 on the basis of written evidence comprising witness statements and documents.
11. Materially for present purposes, the Divisional Court found the following facts (at [74] and [75]):

"74. ... DI Adler suspected that offences of fraud and money laundering had been committed and suspected that Mr Norman was guilty of the offences. I am also satisfied,

and find, that DC O’Toole suspected that offences of fraud and money laundering had been committed and suspected that Mrs Norman was guilty of the offences. It is apparent from the fact that DI Adler arranged (albeit it is now common ground without any lawful basis) for the seizure of all the valuable assets from Ropers Farm that DI Adler believed that Mr and Mrs Norman had acquired and were living on the proceeds of crime.

75. I am also satisfied ... that DI Adler believed that it was necessary to arrest Mr Norman under section 24(5) of PACE. I am satisfied, and find, that DC O’Toole believed that it was necessary to arrest Mrs Norman under section 24(5) of PACE. DI Adler had always planned to arrest Mr Norman so that he could get his account of the source of his wealth without collusion, and Mrs Norman was arrested because DC O’Toole believed Mrs Norman had hidden bags of cash to frustrate the police investigation.”

12. And at [82]-[84, Dingemans LJ said this:

“82. In my judgment there were reasonable grounds to suspect that both Mr and Mrs Norman had committed offences of fraud and money-laundering. This was because there was intelligence reporting that the financial algorithm created by Mr Norman was being sold to investors who had received nothing in return. The informant had spoken to DI Adler, suggesting that the informant was not just a malicious complainant. Companies House research did show that many shareholders had invested with Mr Norman’s companies, but this did not undermine this intelligence, because on the basis of the intelligence it was reasonable to assume that these were the victims of the fraud. The fact that there was no evidence of complaints from the shareholders was important, but it is well-known that victims of fraud may be the last persons to realise that they are victims. The fact that the companies did not have any relevant turnover supported the intelligence that these shareholders had not received anything for their money. The fact that genuine applications had been made to the SEC was again a relevant factor, but the absence of a return to investors to date supported the informant’s statement that this was a fraud.

83. Further the fact that Mr Norman had sold the shares in cash suggested that no reasonable checks about the source of funds had been made and that was an indicator of money laundering. The fact that Mr Norman had kept the money in cash supported the proposition that this was not a normal reputable business providing an opportunity to invest in Fintech. There was an apparent mismatch between the assets possessed by Mr and Mrs Norman and what was declared as income to HMRC.

84. Although these reasonable suspicions were raised by material primarily related to Mr Norman, Mrs Norman was an officer of a relevant company. She was living with Mr Norman with the cars and cash and benefitting from the fraud and money laundering. It was reasonable to suspect that if there was a fraud going on she must have known about it and been involved in it otherwise it would have been reported. It was reasonable to suspect that she was involved in the money laundering because she must have been involved with the cash lying around Ropers Farm.”

13. The Divisional Court therefore refused a declaration that the arrests of the claimants were unlawful and dismissed their claim for damages for false imprisonment.

Issues, Reasoning and Conclusions

14. For the claimants, the main submissions of Mr Anthony Metzger QC can be paraphrased in the following way:

- (1) The defendants withheld from the Crown Court material information tending to exonerate the claimants, contrary to the duty of good faith and candour and in defiance of the warning accompanying the signed declaration that “a person who knowingly makes a false declaration to the court” is liable for contempt.
- (2) The second defendant provided evidence on oath in answer to direct questions from HHJ Gratwicke that was demonstrably inaccurate and in the truth of which she can have had no honest belief.
- (3) The claimants rely on the Chief Constable’s concession in the judicial review proceedings that the warrant application was defective in the following respects:
 - “(1) the application form failed to give an adequate explanation of the market background against which the products being developed by Blue Tractor fell to be evaluated;
 - (2) the application form failed to reveal that no complaint had been made by any person as a victim of fraud;
 - (3) the application form referred to information from Companies House but omitted to mention that there were registers of shareholders consistent with shares having been issued to investors;
 - (4) the application form had a typographical error which suggested that the current balance of the First Claimant’s bank account was £202.000.000 which could have been misinterpreted as meaning £200 million. In fact, it was £202,000;
 - (5) The description of material in box 2(a) of the application form was not identical to that on the draft warrants. In particular box 2(a) included “Any high valued item ...” and this was not replicated on the draft warrants;
 - (6) In box (3)(c) the application form asserted that the investigation may be seriously prejudiced unless immediate access to the material could be secured, but failed to give any cogent explanation as to why this was the case;
 - (7) DC Wilkinson also gave inaccurate information about the offices at Hadleigh Business Centre when reasonable enquiries would have revealed that it was in fact an accountants’ office.”
- (4) The second defendant signed the relevant declaration and plainly failed in her duty to inform the court of any circumstances adverse to grant of a warrant and favourable to the claimants. The first defendant was the “lead officer who directed the process” and “thereby connived in and caused the breach of declaration”. It was he who decided to apply for the warrants.
- (5) Analysis of material from Companies House in respect of Blue Tractor’s business could easily have negated the inference of money laundering and unexplained wealth. The court was not told this; nor that in March 2016, two Blue Tractor companies had filed an application with the SEC for exemptive relief to permit Blue Tractor to operate without being subject to a daily portfolio transparency condition.
- (6) These omissions, the various amendments to the warrants and the admitted defects, raise a strong prima facie case (contrary to Sir Ross Cranston’s view) that the

defendants lacked any honest belief in the truth of what they told HHJ Gratwicke, including through evidence given on oath by the second defendant on 9 April 2019.

- (7) As for the public interest, it is of fundamental importance to the administration of justice and confidence in the police and courts, that the public and judges can rely on the integrity of police officers making applications for draconian and intrusive warrants permitting search and seizure of private property as well as business premises.
 - (8) Police officers should not be “immunised” from contempt proceedings or held to a lower standard than other litigants who mislead the court (for example persons who put false evidence relating to personal injury before the court in support of a personal injury claim).
 - (9) The reference to the overriding objective in the written decision of Sir Ross Cranston was misplaced. The aim of dealing with a case justly and at proportionate cost cannot be achieved by stopping the claim from proceeding. Alternative means of obtaining redress, such as a claim for damages, are not relevant.
15. For the defendants, I paraphrase the main points made by Mr Sam Thomas as follows:
- (1) The Court of Appeal has cautioned against too freely granting permission for contempt proceedings, warning against “the risk of allowing vindictive litigants to use such proceedings to harass persons against whom they have a grievance, whether justified or not ...” (see *KJM Superbikes Ltd v. Hinton* [2008] EWCA Civ 1280, per Moore-Bick LJ at [16]-[17]).
 - (2) There is no evidence that either of the defendants or their superior investigating officer (Detective Inspector Dibbel) were aware of material information that could be obtained from Companies House or that was contained within the application (of which the first defendant admits he was aware) to the SEC.
 - (3) The judge was right to point out that a careless omission or oversight would not be sufficient and that there was insufficient evidence to support a strong prima facie case of knowingly misleading the court.
 - (4) The first defendant’s knowledge of the SEC application does not demonstrate that he was aware this was material information that might reasonably be capable of undermining the grounds of the application for a warrant. The first defendant appeared not to understand the significance of the application to the SEC.
 - (5) The first defendant, as senior investigating officer, would not necessarily have checked the content of the warrant applications. Final responsibility and oversight lay with Detective Inspector Dibbel, who is not joined in the present application for permission.
 - (6) The transcript of the hearing on 9 April 2019 shows that the second defendant did not knowingly give false evidence on oath. She clearly lacked experience and made incorrect statements but would not have any incentive to do so knowingly.

- (7) There is no public interest in allowing the proposed contempt proceedings to be brought. The continuation of the proceedings would be contrary to the overriding objective and the judge was right so to decide. The claimants have pursued other avenues of redress including the judicial review proceedings; that is sufficient.
16. As this is a renewed application for permission made orally, after a refusal on the papers without an oral hearing, I address the question of permission afresh and do not confine myself to undertaking a review of Sir Ross Cranston's decision on the papers.
 17. Other authorities were cited to me. In some first instance decisions judges have sought to add to the jurisprudence and establish further propositions. I think the law is adequately and fully stated in the *KJM Superbikes* case and I do not find it necessary or desirable to embark on a review of further authorities containing examples of cases falling one side of the line or the other.
 18. On the facts relied on here, I find myself in agreement with Sir Ross Cranston and I prefer the defendant's submissions. In my judgment, the strong prima facie here is one of serious lack of judgment and forensic skill and serious lack of care in managing the information available to Essex police. It is not a strong prima facie case of dishonestly misleading the judge.
 19. I consider first the position of the first defendant. He had responsibility for determining the content of the warrant application, subject to the oversight of DI Dibbel. His belief that the claimants were money launderers and using their property for that purpose was genuine. He was not seeking a search warrant in bad faith. The case is qualitatively different from the making of a false statement in a personal injury claim with the intention of securing damages.
 20. On the evidence before me, he had little understanding of the way in which Blue Tractor conducted its business. He saw an absence of paperwork and (since 2008) of personal tax returns or tax payments on the part of the first claimant. He appears to have believed that the evidence in his possession presented a strong case for a warrant and he arranged for the second defendant to place that evidence before the judge and attest (on oath) to its correctness.
 21. He fully appreciated the point that the business appeared to be conducted in cash and that purchasers of shares appeared to have got nothing for their money. What he did not do was the necessary research and forensic work that would have exposed the weaknesses in the case that the claimants were money launderers and using their private property for that purpose.
 22. Thus, he did not research Companies House documents. He did not secure that the judge was clearly told whether the first claimant's bank balance was £202,000 or £202 million. He did not, for some reason, verify the nature of the business premises that turned out to be the office of an accountancy firm. The evidence that he did not properly brief his subordinate, the second defendant, is very strong.
 23. The first defendant did not follow up with any investigation of the communications between Blue Tractor companies and the SEC. He preferred to content himself with the thought that these dealings with the SEC were intended to lend a "vener of

- respectability” to the business and that this was not something the judge needed to be told about.
24. It is troubling that he did not require the second defendant to tell the judge about the communications between Blue Tractor companies and the SEC. It was particularly important for the judge to be told about the SEC application because the case advanced by Essex police was that Blue Tractor was trying to operate outside the conventional financial system, without proper paperwork.
 25. The SEC application showed Blue Tractor doing the opposite: placing itself on record with an internationally respected financial body with all the powers it needed to scrutinise the propriety of Blue Tractor’s business. However, I do not think that omission raises a strong prima case of anything worse than a serious error of judgment. It is not the purpose of contempt proceedings to discipline and punish those who make such errors.
 26. Much of Mr Metzger’s argument was concerned with the notion that what the judge was told was “recklessly false”, in his phrase. In oral argument, he explained variously that by this he meant either that the maker of the statement did not care whether the statement made to the court was true or false; or that any belief in its truth was so obviously unsupported by objective material as to raise a strong prima facie case that the belief must be discounted.
 27. I do not think there is much room for reckless falsity of that kind in a case such as this, if indeed the notion is sound at all. Mr Metzger’s real (and well founded) criticism is that the police did not (as he put it) “do their homework”. There could be a case where an omission is so glaring as to raise an irresistible inference of intent to mislead the court; but that is not close to the position here.
 28. I turn to the part played by the second defendant. She was the person who actually presented to the court the evidence in support of the application, acting under the direction of the first defendant and, ultimately, of DI Dibbel. It took three attempts to get the paperwork for the warrant application in order, aside from the substantive content of the evidence which she declared, under her signature, to be full, complete and correct.
 29. The transcript of the hearing before HHJ Gratwicke on 9 April 2016 shows that the second defendant had little understanding of Blue Tractor’s business. The strong prima facie case at this stage, as against the second defendant, is that she took her boss’s word for the correctness of the evidence contained in the warrant application. She was out of her depth, professionally, and should not have been asked to take on a responsibility for which she was ill equipped.
 30. I do not accept the claimants’ submission that she must have knowingly misled the judge because she confirmed the correctness of the information in the warrant application that is now known to be, and conceded to be, erroneous. Her confirmation of those erroneous matters is as consistent with honest mistake as with nefarious intent to deceive the court. The latter is far fetched; the former, very likely.
 31. A person giving evidence to a court (on oath or affirmation) may give evidence to the effect “I believe X is true”. By that, she may mean that she has personally satisfied

herself from her own researches of the evidence supporting that belief. Or, she may mean: “I believe X is true because Y told me it is true and I believe him”.

32. If the judge, in the present case, had asked the second defendant during her evidence on 9 April 2019: “what checks have you carried out?”, she might well have answered “none at all”. Or, she might have answered: “personally, none but I understand this has all been checked out by others and I am confident it is correct and complete”.
33. Neither of those two answers would be satisfactory but neither would be dishonest. Such an answer might well lead the judge to refuse the warrant application. It would be a different matter if the untrue answer was that the witness had personally checked all the information and confirmed its veracity when she had done no such thing.
34. A judge faced with an application such as this has a difficult job. The court has to strike the balance between careful probing to flush out any inadequacies in the supporting evidence, on the one hand; and, on the other, permitting properly founded police investigations to proceed in a manner likely to assist in the detection of crime and the bringing offenders to justice. The balance is delicate.
35. In the present case, the warrant should not have been applied for or granted, but it does not follow that there is a strong prima facie case that a contempt was committed here, by either defendant. I will therefore refuse permission, as Sir Ross Cranston did.
36. If I had been of the view that there was a strong prima case of deliberate misleading of the court, in a more than trivial way, I would most likely have followed the same course as the Court of Appeal in *KJM Superbikes* and granted permission. It is difficult to see any public interest in permitting knowingly false evidence to be given to a judge with impunity.
37. I do not read Sir Ross Cranston’s reasons as supporting any such proposition. It is obvious that the strength of the case that a contempt was committed, is strongly bound up with the strength of the public interest in permitting proceedings that would enable that contempt, if committed, to be punished.
38. I agree with Mr Metzger that the overriding objective is not directly engaged where, as here, the decision is to refuse permission altogether. It would be if, for example, the court were to give permission for some allegations of contempt to proceed while others, being trivial, are not allowed. That would be an instance of requiring proportionality of resource use and costs to be observed.
39. For those brief reasons, I refuse the application.