

Case No: ATC/14/0634

[2014] EWHC 4839 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 20 November 2014

BEFORE:

HIS HONOUR JUDGE SEYMOUR

BETWEEN:

THE GOVERNOR & COMPANY OF THE BANK OF IRELAND

Claimant

- and -

SHAH & ANR

Defendants

MR S McLAUGHLIN (instructed by TLT LLP) appeared on behalf of the Claimant
The First Defendant did not appear and was not represented.
The Second Defendant appeared in person

Judgment
(As Approved)

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(Official Shorthand Writers to the Court)

1. JUDGE SEYMOUR: In this action the claimant, the Governor & Company of the Bank of Ireland, sought possession against, originally, Mr Chetan Amritlal Shah of premises at 57A Heather Park Drive, Wembley. In that action an order was made on 19 June 2012 by Deputy District Judge Atkin that the defendant, Mr Shah, give the claimant possession of the premises on or before 17 July 2012. It appears that in fact Mr Lawrence Dubash was in occupation of the premises as at the date at which possession was required to be given, 17 July 2012, or at any rate that thereafter Mr Dubash went into occupation of the property. Subsequently, by an application which was made in the Willesden County Court on 10 April of this year, Deputy District Judge Hussein ordered that Mr Dubash be added as second defendant to these proceedings and that there be permission to the claimant to issue a warrant of restitution against the second defendant. The order of Deputy District Judge Hussein was endorsed with a penal notice as follows:

“Take notice that unless you obey the direction contained in this order you may be guilty of contempt of court and may be liable to be committed to prison for failing to comply with the order of Deputy District Judge Atkin dated 19 June 2012 as from the date of this order.”

2. By an order which was made by District Judge Middleton-Roy on 29 May 2014 the action which had originally been commenced in the Willesden County Court was transferred to this court for enforcement by a High Court enforcement officer pursuant to section 42(2) of the County Courts Act 1984.
3. There is a lengthy explanation in the first affidavit of Helen Claire Merritt, a legal assistant employed by TLT LLP, the solicitors acting on behalf of the claimant in this action, of the attempts which have been made to obtain possession of the premises by the claimant. The interest of the claimant originally was as mortgagee, and, as I understand it, the claimant requires possession in order to be able to realise the security.
4. The application notice which is presently before me, which was issued on 29 September 2014, seeks an order that the second defendant, Mr Lawrence Dubash, who has re-entered the property at 57A Heather Park Drive, Wembley, in breach of the order for possession attaching a penal notice as executed by the High Court enforcement officer on 25 July 2014, be committed to prison. That is the only alleged contempt. Consequently, although there is a lengthy and unhappy recitation in the first affidavit of Helen Merritt concerning the steps which the claimant has taken to obtain possession, I think I am concerned only with the events described in this affidavit starting at paragraph 27. At paragraph 27 Helen Merritt says this:

“An eviction date was scheduled for Friday, 25 July 2014 at 9 o’clock in the morning. The Sheriffs Office informed me that it would put the police on notice of the eviction and that their attendance might be required due to the issues encountered at the previous eviction. Notice of the eviction was not given to Mr Dubash.

28. On 25 July 2014 at about 9 o'clock in the morning two High Court enforcement officers from the Sheriffs Office attended the property with a locksmith and an agent from the shuttering company, the Clearway Group, both instructed by Humphrey and Gray on behalf of the claimant. The writ of possession was executed by the High Court enforcement officer, Mark King from the Sheriffs Office, and the claimant took the property into possession for the third time. The Sheriffs Office informed me that the property was vacant at the time the writ of possession was executed. The High Court enforcement officers left the property at around 10.22 in the morning.

29. The locksmith and agent from the shuttering company stayed behind at the property to install external shuttering with coded entry to the front and back door of the property. Coded entry shuttering is believed to be less penetrable than key entry shuttering because there is no hole to drill through. The shuttering company also installed an alarm system in the property. The alarm system was linked to a response team who would be notified if the alarm was triggered.

30. Humphrey and Gray informed me that Mr Dubash arrived at the property at around 10.45 in the morning. At this time the agent of the shuttering company was in the process of installing the coded entry shuttering. Humphrey and Gray informed me that Mr Dubash entered 57 Heather Park Drive, the neighbouring property, while the agent was securing the property.

31. The property comprises a first floor maisonette. 57 Heather Park Drive is the ground floor maisonette situated below the property. 57 Heather Park Drive is a separate title and does not form part of these proceedings. The front door to the property is adjacent to the front door to 57 Heather Park Drive. Mr Dubash has provided 57 Heather Park Drive as his correspondence address.

32: I was informed by Humphrey and Gray by email that on Saturday, 26 July 2014 the alarm was triggered. In summary, Humphrey and Gray reported the following information. The alarm was triggered at 3.02 in the afternoon and the response team attended the property within 40 minutes. By the time the response team attended the property Mr Dubash had broken back in. The alarm system and the shuttering on the front door of the property had been removed and left in the garden. The response team called the police who attended the property at 4.22pm. The police refused to remove Mr Dubash from the property without a warrant of arrest, insisting that this is a civil matter. The shuttering on the back door is still intact.

33. The Sheriffs Office confirmed that Mr Dubash was not in the property at the time the writ of possession was executed. However, Mr Dubash arrived at the property shortly after the High Court enforcement officers had left and later entered 57 Heather Park Drive. The shuttering company informed Humphrey and Gray who

subsequently informed me that it is likely that the shuttering was removed from the inside. It is therefore possible that Mr Dubash is accessing the property internally via 57 Heather Park Drive.”

5. On that evidence it is plain, in my judgment, that that contempt alleged is made out; that is to say, that Mr Dubash, having been evicted from the property 57A Heather Park Drive, Wembley on 25 July by the High Court enforcement officer, has, in breach of the penal notice attached to the order to which I have referred, broken back into the property.
6. This application first came before Spencer J on 16 October 2014. On that occasion Mr Dubash did not appear but a lady called Joanne did appear, appearing to Spencer J at any rate to have a power of attorney on behalf of Mr Dubash. Spencer J amongst other directions made an order in these terms, at paragraph 3 of his order:

“The second defendant shall by 4pm on Friday 24 October 2014 file and serve a witness statement in proper form supported by a statement of truth setting out succinctly the grounds upon which he maintains that he is not in contempt of this court by failing to give possession of the property known as 57A Heather Park Drive, Wembley.”
7. Mr Dubash did not comply with that direction. Spencer J, at paragraph 1 of his order, directed that the application for committal stand adjourned until 10.30 this morning, and so it is that the application has come on for hearing before me.
8. Mr Dubash has appeared in person. He has chosen not to answer my enquiry as to whether he agrees that he was evicted by the High Court enforcement officer from the premises at 57A Heather Park Drive, Wembley on 25 July 2014. He has chosen not to answer my enquiry whether he is currently in occupation of 57A Heather Park Drive. I have invited him, having pointed out to him that the material before me seems to indicate plainly that he is in contempt of court, to address me, if he chose, in relation to the penalty which I should impose. He has chosen not to do so.
9. I am satisfied on the evidence before me that Mr Dubash is in contempt of court in that, having been evicted from 57A Heather Park Drive, Wembley on 25 July of this year, he has, in flagrant breach of the penal notice, re-entered that property. This is a serious contempt, showing, as it seems to me, a total disregard on the part of Mr Dubash for orders of this court. In those circumstances, as it seems to me, I have no alternative but to make an order that Mr Dubash be committed immediately to prison for a period of three months.