Emery v Wandsworth LBC

2013 WL 5905605

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Case No: 1HQ/13/0394

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Strand

London

WC2A 2LL

Thursday, 14th November 2013

BEFORE:

MRS JUSTICE ANDREWS DBE

BETWEEN:

EMERY

Applicant

- and

WANDSWORTH LONDON BOROUGH COUNCIL

Respondent

MS OSCROFT (instructed by LBC Wandsworth) appeared on behalf of the Applicant

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Approved Judgment

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(Official Shorthand Writers to the Court)

MRS JUSTICE ANDREWS:

1. The matter comes before the Court today as an application by Ms Emery, who represents herself (though she is not present today) to discharge an order that was made by Haddon-Cave J on 20th June 2012. The order is a general Civil Restraint Order ("CRO") and it came about in circumstances that are set out in the learned Judge's judgment.

2. There is a lengthy history of proceedings between Ms Emery and the London Borough of Wandsworth arising from the fact that at some point earlier in time she failed to pay rent on her

accommodation and was evicted. There was then an agreement that she could remain in the accommodation provided that she paid by instalments. For various reasons she did not do so. She was evicted again, and there have been many subsequent applications to the Wandsworth County Court in connection with that general matter.

3. On 2nd April 2012, his Honour Judge Mitchell, who was dealing with a matter in the County Court, made a Civil Restraint Order against Ms Emery. It forbade her for a period of two years from issuing any new application, appeal or other process in that action or from issuing any further proceedings or other further application or process in any action without obtaining permission from District Judge Guinan, or from another District Judge in the event of unavailability of that District Judge. Paragraph 4 stated that any amendment or discharge of that order could only be made by his Honour Judge Mitchell.

4. The reasons why that order was made are set out on its face. An attempt at a later stage by Ms Emery to obtain the permission of this Court out of time to appeal against that order has been refused on the basis that there are no grounds on which it could possibly be argued that the judge exercised his discretion wrongly. I agree entirely with the observations of Globe J in regard to the 2nd April 2012 CRO. It is clear that Ms Emery had demonstrated a history of making applications which were wholly ill-founded, not only in the action in question, but in other applications to the court involving other parties and the need for a CRO was made out. It was well within the Court's discretion to make one.

5. What then happened was that when Haddon-Cave J was sitting in court 37 as the Applications Judge on 19th June 2012, Ms Emery turned up at midday and demanded that he hear her, on the basis that she said that she needed the urgent suspension of a warrant of possession that had been obtained by London Borough of Wandsworth against her. She did not tell Haddon-Cave J that she was subject to a Civil Restraint Order. In her favour it can be said that she may not have fully appreciated this, because the order of Judge Mitchell had not been served upon her at that point. The reasons for that remain obscure on the papers, but in any event it was served on her later that day. In ignorance of the history, Haddon-Cave J. made a short-term ex parte order suspending possession.

6. According to Ms Emery, the solicitors that she had then instructed had appeared before the Wandsworth County Court on the previous day, 18th June, in order to get a suspension of the possession order, and they had been denied the ability to make that application because of the existence of Judge Mitchell's CRO and the absence of prior permission. I do not know whether that is true or not. There are a number of assertions that have been made by Ms Emery in her skeleton argument that are demonstrably untrue and therefore, one has to take what she says with some degree of scepticism, but for the purposes of this application, I will take that allegation at face value and assume in her favour that she felt that she had no alternative but to go off to the High Court to seek relief.

7. However, what is totally unacceptable is that the matter then came back on the afternoon of the same day, 19th June, in Wandsworth County Court before District Judge Guinan and, although at that point Ms Emery was instructing solicitors and counsel, the fact that she had been to court 37 and got the order that she did from Haddon-Cave J, did not come to light until after District Judge Guinan had heard the application and had exercised her discretion to refuse it.

8. Ms Emery says in her skeleton argument that she had told her counsel and that she had repeatedly tried to tell Judge Guinan what the position was, but had been told to sit down and not address the Court. However I have seen a transcript of the proceedings before Judge Guinan. It is true that Ms Emery was told not to address the Court directly, but that was in the context that her counsel, on her instruction, was making applications on her behalf. Indeed counsel made submissions to the Court even in the course of Judge Guinan delivering her judgment, when she was allowed to do so on no fewer than three occasions. I do not accept that Ms Emery's counsel was told about Haddon-Cave's J order. If she had been, it is inconceivable in the circumstances that she would not have told District Judge Guinan, given that she demonstrably did act upon her client's instructions on numerous occasions in the course of that hearing.

9. Accordingly, a lot of Court time and costs were wasted in an application which was on the face of it unnecessary, because Haddon-Cave J had already granted the relief that was being sought in the County Court and which was then denied by the District Judge. Not surprisingly therefore, when the Council went back the following day to tell Haddon-Cave J about this unhappy saga, he was not impressed. His judgment is measured in tone, but it is quite clear that in the circumstances of the case he was not impressed by the fact that he had not been told of the history and that he had been

deliberately kept unaware that there were proceedings going on in the Wandsworth County Court at the same time. It is not surprising that when he was given the full story, he discharged the earlier ex parte order and considered his own jurisdiction to make a CRO.

10. It is submitted by Ms Emery in her skeleton argument that he had no jurisdiction to make a further CRO, because there was already Judge Mitchell's order. That betrays a misunderstanding of the jurisdiction of the High Court. A County Court judge cannot make a CRO precluding somebody from bringing High Court proceedings. Haddon-Cave J extended the ambit of the general CRO to include proceedings in any Court. He felt that it was necessary that there should be such an order, as he said himself, not only in the interests of the Council and other people who might be on the receiving end of litigation from Ms Emery, but in Ms Emery's own interests as well. That is something that is entirely understandable, because the purpose of a CRO is not to shut somebody out from court altogether. It is to create a filter whereby a judge can look at a proposed application by somebody who is disposed to make unmeritorious applications and say, if the application is well-founded or has a real prospect of success, that it should go ahead. So if any application that Ms Emery wants to make while the order is in force has merit, then a judge will look at it and will say so and she will not suffer any disadvantage. But if the application has no merit she will not suffer the disadvantage of litigating it, becoming disappointed (as she inevitably will) when she loses it, and then facing another order for costs against her, which she no doubt will be unable to afford, because she is living on benefits. So Haddon-Cave J exercised his discretion in a way which was balanced, which took into account all the factors that he should have taken into account and which was proportionate in terms of its restriction of Ms Emery's access to the courts.

11. Of course, the present application is not an application to appeal against that order or an application to challenge the making of the order, although the grounds that are put forward sometimes trespass into that territory. It is an application to discharge it. Haddon-Cave J did make provision for an application that the order could be discharged. As with any other application, that application requires the permission of Ouseley J or in the alternative a judge that he has nominated. Ms Emery has not formally applied for such permission, either to Ouseley J or anyone else, but the substantive hearing has come on before me today without such permission having been granted. On being informed of the situation, Ouseley J. has nominated me to deal with any application for permission or related applications.

12. Having considered the situation and having discussed the matter with counsel for Wandsworth LBC, it seemed to me that the most appropriate use of my case management powers in these circumstances was to treat this application as an oral application for permission to apply to discharge Haddon-Cave J's order and also to deal with the substantive merits of that application at the same time in a rolled-up hearing. I would inevitably have to look at the merits when considering the grant of permission, and in those circumstances it seems to me that it would be a terrible waste of time and costs for the matter to be dealt with in two separate hearings.

13. It is also to the advantage of Ms Emery that I take this course, because under the terms of the CRO any application for permission is to be determined on paper without an oral hearing, whereas I am dealing with this matter in open court and with the benefit of oral submissions. It is Ms Emery's choice to have absented herself this morning and not to have made any oral submissions to me, but I do have in mind her extensive written submissions running to many, many pages in which she not only criticises Haddon-Cave's J order, but the earlier order of Mitchell J, her own solicitors and counsel, those representing Wandsworth LBC and many other people. I have read them very carefully.

14. Having done so, as I say, I have noted that there are a number of occasions in which matters are put forward as factually accurate, which are demonstrably not factually accurate, and it can be shown from the transcripts of earlier hearings that, on a charitable interpretation, Ms Emery has got the wrong end of the stick. I just give a couple of examples. In paragraph 42 she states:

"Wandsworth County Court Judge Guinan refused to hear the merits of our case or defence against possession, because of the Haddon-Cave J order."

That is not true. District Judge Guinan heard the application on its merits before she even knew of Haddon-Cave's J order, and she made a ruling, which was adverse to Ms Emery. Likewise paragraph 43:

"The application before Haddon-Cave J was not an abuse of court process as the judge was annoyed

by perceived duplication of the general Civil Restraint Order."

It is quite clear from the terms of his judgment that Haddon-Cave J, if he was annoyed at all, was annoyed by the behaviour of Ms Emery. The cause of his dissatisfaction was not the duplication of the general CRO, but the fact that he had not been told that a CRO was in force at the time when the original application was made to him. In any event, he granted temporary relief to Ms Emery the first time round. It was only in the light of her subsequent behaviour that he withdrew that order and made the CRO.

15. I have already explained that the allegation that Haddon-Cave J had no jurisdiction and that his order is void for duplication, because there was already a CRO in force, is misconceived. As to paragraph 46, Ms Emery states:

"The Applicant finds it difficult to comprehend that Haddon-Cave J did not consider that there was something highly suspicious about the London Borough of Wandsworth turning up at court the day after the Applicant had appeared before him when he had granted a stay and that the Applicant was absent from the proceedings."

Haddon-Cave J had no reason to consider there was anything suspicious about the Council turning up the day after in order to correct the record, because the order had been made in their absence without giving them any notice whilst they were fighting a duplicate application in Wandsworth County Court. Therefore, he was perfectly entitled to proceed with the application that they made to discharge his order, on the basis that he had not been told the full story. He was entitled to proceed in the absence of the Applicant, and he was entitled to discharge his order on the basis of the full facts. Those are just examples of the kinds of inaccuracy pervading Ms Emery's written submissions.

16. I now turn to consider the substance of this application, which is to discharge the CRO made by Haddon-Cave J. I must proceed on the basis that the order was properly made (as indeed it was). The question therefore is whether there has been any material change in the circumstances that gave rise to the order and the justification for it, such that I should exercise my judicial discretion to grant permission and set the order aside.

17. Now quite often when an application of this nature is made, the person who is the subject of the Civil Restraint Order can come to court and say: "The cause of all my grievance is at an end, the litigation between myself and the party with whom I was aggrieved is now over. I have put it all behind me. I have learnt the error of my ways. There is no risk whatsoever that I am likely to be making vexatious applications to court in future, and I can demonstrate this in certain ways." However, no evidence of that kind has been placed before the Court by Ms Emery.

18. On the contrary, I accept Ms Oscroft's submission that the volume of material relating to what has happened since Haddon-Cave J made his order confirms that he was right to have made it and that the justification for a general CRO still exists. In particular, Ms Emery has made totally unmeritorious applications for permission to appeal his Honour Judge Mitchell's order way out of time, and for permission to seek judicial review in the context of an application for the Council to provide Ms Emery and her son with temporary accommodation.

19. The order of Collins J refusing permission to bring judicial review directed Ms Emery's solicitors and counsel to show cause why they should not pay the wasted costs thrown away by the judicial review proceedings. That indicates that she is still quite prepared to make applications that the Court considers to be wholly without merit. Likewise, on 30th April Mr John Howell QC, sitting as a Deputy Judge of the Administrative Court, refused a renewed application by Ms Emery for permission to seek judicial review and he recorded that the application for permission was totally without merit. So there are a number of occasions since the making of Haddon-Cave's J order (and we are now about halfway through its duration) where Ms Emery, far from learning the error of her ways and putting matters behind her, has persisted in making applications that are wholly without merit and often persisted in ignoring the requirement that she should seek permission to make the applications before she launches them, this present application being one such case in point.

20. In the light of all the information before me and having very carefully taken into account everything that Ms Emery has said on paper, I am not persuaded that this is an appropriate case in which to grant her permission to bring an application to challenge Haddon-Cave's J order, but even were I to grant her permission the application to discharge the order would be dismissed in any event, because it is wholly lacking in merit. I am prepared to certify it as being totally without merit, which may have implications for the future. All I can do at the moment is to record my gratitude to Ms Oscroft for her

careful preparation and for steering me through all of the complicated background to the case and to thank the Respondents for their carefully prepared bundle, which has been of enormous assistance to the Court.

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