[2022] EWHC 1256 (QB)

Case No: EN 139/2021; F2DP628Z

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 May 2022

Before :

Master Brown

- -

Between :

PROGRESSIVE PROPERTY VENTURES LLP	**Claimant**
- and -	
KAMIL MROZINSKI	**Defendant/ Applicant**
-and –	
DAVID ASKER (High Court Enforcement Officer) (1) -and- MICHAEL PERKINS (Enforcement Agent)(2)	**Respondents**

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Ms. Hougie. Solicitor Advocate for the Applicant
Ms. Banks, Counsel (instructed by LG Williams & Prichard) for the Respondents

Hearing dates: 31 March, 8 April, 5 May 2022

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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.

....

Master Brown :

(1) This case concerns the enforcement of a judgment entered for the Claimant in the sum £10,155,67 (inclusive of interest) and costs of £865 in November 2019.

(2) The issue that I have been required to consider is whether the fees and disbursements of the enforcement agent should be disallowed under Regulation 12 of the Taking Control of Goods (Fees) Regulations 2014 ('the 2014 Regulations'). The regulation provides:

> *Where the debtor is a vulnerable person, the fee or fees due for the enforcement stage (or, where regulation 6 applies, the first, or first and second, enforcement stages as appropriate) and any disbursements related to that stage (or stages) are not recoverable unless the enforcement agent has, before proceeding to remove goods which have been taken into control, given the debtor an adequate opportunity to get assistance and advice in relation to the exercise of the enforcement power.*

(3) The fees at stake are, as I understand it, some £685.

(4) Although 'vulnerable person' is not defined in the Regulations, *the Taking Control of Goods: National Standards April 2014* indicate that the term 'vulnerable' is to be construed widely. A relatively transient condition may suffice (as to which see para. 3.4 of the *Explanatory Memorandum*). Indeed it seemed to me, and neither party appeared to disagree with this suggestion, that it might be said to cover a significant proportion of judgment debtors. In any event I was satisfied at an earlier hearing, doing the best I could on the evidence, that the Applicant should be regarded as vulnerable for these purposes.

(5) The issue that has caused particular difficulty is the meaning of '*assistance and advice in relation to the exercise of the enforcement power'* in Regulation 12, a matter on which I have specifically sought assistance from the advocates.

(6) A Writ of Control was issued on 14 September 2021 and a Notice of Enforcement dated 15 September 2021 was received by the Applicant on 24 September 2021. This required payment of the outstanding sum by 28 September 2021. In his subsequent email of 14 October (just under three weeks after receipt of the Notice) the Applicant asserted that he was vulnerable and he asked, in effect, that the enforcement procedures be put on hold. In the email he said that he was suffering mental distress; he also referred to an "illness issue related to breathing (sinuses and allergy)" (an attached letter from a hospital doctor following examination on 28 July 2021 described a deviated septum and an allergy to pollen and alcohol which appears to affected him in some [quite extreme] sports but he was generally considered to be fit and well). He asked for an extension of time to make any payments. No application to court was however then made.

(7) In the event, the Applicant's car was not taken into control until 4 November 2021 when it was clamped. It was removed the following day, on 5 November, when the debtor again sought time to get advice, this time about applying to set aside or variation of the judgment. He again said he was vulnerable (and says he provided copies of prescriptions). It is on the basis of the prescriptions and in particular a medical note of 6 November which appears to confirm prescription of Sertraline and other medication that I considered that the Applicant was likely in fact to have been a vulnerable person at the material time (not by reason of the nasal/allergy problems alone): he was likely to be suffering from anxiety (and/or depression) and significant problems sleeping to such an extent that medication was required; it seemed to me, that this would have affected his ability deal with the issues that enforcement presented (even allowing for his relative sophistication).

(8) The Respondents' case, as I understand it to have evolved, was that I should consider the whole of the period after service of the Notice of Enforcement when considering the term '*the exercise of the enforcement power*' (initially it had been the far longer period since judgment in November 2019).

(9) Regulation 2 of the 2014 Regulations, however, provides that '*enforcement power"*' has the meaning given by paragraph 1(2) of Schedule 12 of the Tribunal Courts and Enforcement Act 2007 Act. Under the heading ***The Procedure***, Schedule 12 paragraph 1 provides:

> *(1) Using the procedure in this Schedule to recover a sum means taking control of goods and selling them to recover that sum in accordance with this Schedule and regulations under it.*
>
> *(2) In this Schedule a power to use the procedure to recover a particular sum is called an "enforcement power".* [my underlining]

(10) Further, under the heading ***Enforcement by taking control of goods***, section 62 (2) of the body of the 2007 Act says:

> "*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*." [my underlining]

(11) In *Just Digital Marketplace v HCEOA* and others [2021] EWHC 15 (QB) Judge McCloud said (at [59]):

> *"Ms Padfield stated uncontroversially that by s. 62 of the TCEA, the power conferred by a Writ of control is exercisable only by using the procedure in Schedule 12 to the Act and that taking control of goods could only be done by an enforcement agent (s.63). It follows that a process which purports to take control by way of a CGA which does not comply with Schedule 12 is not a valid exercise of the power*."

(12) Thus, whilst the 'enforcement power' arises once the Writ is directed to the agent (High Court Enforcement Officer), the exercise of it only commences when the procedure for taking control commences validly: that is, on taking control of goods. For this purpose I think it is irrelevant, as Ms. Banks now argues, that the Writ (issued on 14 September 2021) may have bound the goods (under Schedule 12 Part 2); similarly the matters set out in Regulation 6 of the 2014 Regulations dealing with the stages of enforcement. Neither matter helps, to my mind,

in determining when the enforcement power is exercised. I therefore consider myself bound to reject the Respondents' case on this point.

(13) I should add that Ms. Hougie relied on the matters in parentheses, *before proceeding to remove goods which have been taken into control.* When read with the provisions above, it seems to me that this does provide further support for the conclusion that the requirement to give the debtor an adequate opportunity to get assistance and advice arises once the relevant goods have, as a matter of law, been taken into control.

(14) The Applicant had, notwithstanding the anxiety and sleep problems from which he was likely to have suffered, been given an adequate opportunity to get advice or assistance with the setting aside of the judgment, to ask for an extension of time for payments and to respond to the error on the Notice as to the sums due (the Writ and Notice having failed to take into account payments made; a matter of which he could be taken to have aware on receipt of the Notice). It was unclear to me why a further opportunity to take advice and assistance after the car was taken into control was necessary. I was not initially persuaded there were any further matters on which relevant advice and assistance was or might be required (given, in particular, some sophistication on the part of the Applicant, or at least familiarity with the rules). There was, further, a long history to the matter (inter alia the Claimant having obtained judgment as long ago as November 2019 and the Applicant had made, in the interim, applications to the court to stay enforcement). The Applicant would have been aware from the Notice of Enforcement that if he did not pay or agree a payment arrangement, an enforcement agent would visit him and may seize his belongings.

(15) However, such an approach seems to me wrong in law. The debtor should have '*an adequate opportunity'* to get advice and assistance once the enforcement power is exercised; that is the taking into control of the goods. In this case that is on the clamping of the car.

(16) I understand from the parties that in the case of a debtor who is not vulnerable no substantial time may be allowed at all after the taking into control of the goods (the clamping) and before the removal of goods (a matter of hours may suffice).

(17) Although it remains unclear on what further matter the Applicant may in this case have in fact required further assistance once the car was clamped it seems to me that there could well, as a matter of generality, be matters that specifically arose for consideration on the taking into control of goods. In any event the regulations provide that there must be an opportunity to get further advice and assistance at this stage. The explanation for that, if any is required, is that vulnerable people may have more difficulties engaging with the process in the early stages and so should be given the chance to seek advice when the enforcement agent is "on their doorstep", as suggested in the Explanatory Memorandum, para. 3.5.

(18) The Explanatory Memorandum said that guidance would be issued on best practice regarding the timing and type of advice a debtor should be allowed to seek (para. 3.5). I am told that no such guidance has been issued.

(19) It seems to me clear, however, allowing for the practical difficulties associated with seeking and obtaining advice and assistance, one day from the taking the car into control is not adequate in all the circumstances. I allow for the opportunity that was in fact given to the Applicant to address his indebtedness at an earlier stage prior to the clamping of the car and

allow for the possibility that the Applicant may have been able to and may indeed have made calls with a view to getting assistance following the clamping of the car.

(20) I was told that on occasions cars can, after clamping, be left for weeks without being removed. In this context the speed with which the Enforcement Agent acted was perhaps surprising. Be that as it may, it seems to me appropriate to note that the clamping of a car, as here, (presumably with a penal notice attached) is to be treated as safeguarding the car and sufficient to protect the creditor's right to recover what is owed to them (see again the Explanatory Memorandum).

(21) I had initially been of the view that '*given*' required the enforcement agent to engage with the debtor by responding to the matters raised by him (and seeking details as to any vulnerability). The 2014 Standards suggest that may be to place too high an obligation on the agent. Nevertheless even if the word 'given' is to be taken as meaning '*allowed*', it seemed to more time should have been given to ensure that the advice and assistance could be obtained. Such assistance, it seems to me, must include practical assistance (and might include, for instance, an application to the court or negotiation with the creditor). Ms. Hougie suggested that a working week, or at least several days may be more reasonable. That was not a lengthy period in context of this case.

(22) The Agent's fees and disbursements will, accordingly, be disallowed to the extent that is required under regulation 12.

(23) Not once but twice, so uncertain was I as to the correct approach, I felt the need to re-consider my decision under the *Barrell* jurisdiction. I did so after careful consideration and having sought to balance the arguments and competing interests of both sides. In the event I consider my initial decision was correct- albeit for different reasons than was then given.

(24) I had formed the view that more authoritative consideration and guidance was required on the interpretation of the regulations. This was before I had considered the relevant provisions of the 2007 Act which had not earlier been provided to me. On the basis of a consideration of these further matters the outcome currently appears to be clear – albeit I will consider all matters consequential on the handing down of my decision and any other matters arising.

(25) I should add that I do not accept that I should revisit the finding that I made as to vulnerability. The Respondents now urge me to reject the evidence, in particular the witness statement, that I have received from the Applicant about this (it being said that Applicant may have had difficulties with English). I note that Respondents appear to have had substantial dealings with the Applicant well before this application (and might be presumed to know whether he could communicate in English). In any event the point was made too late, without any or firm or adequate basis. Indeed it was unclear to me how re-opening the question as to vulnerability would be appropriate on the grounds relied upon- given the essential matters arose from the exhibited documents (the email of 14 October/ the prescriptions/ the medical note).