

Neutral Citation Number: [2024] EW Misc 21 (CC)

Case no: G00BD588

IN THE COUNTY COURT SITTING AT BRADFORD

Date: 4 July 2024

Before :

HHJ MALEK

Between :

NATIONWIDE BUILDING SOCIETY

**Claimant/ Part
20 Defendant**

- and -

MISS SIOBHAN FRANCES RAMSEY

**Defendant /
Part 20
Claimant**

Mr. Isaacs (instructed by **TLT LLP**) for the **Claimant/Part 20 Defendant**
Miss. Ramsey appearing **In Person**

Hearing date: 19 June 2024

APPROVED JUDGMENT

<p>This Judgment was handed down on [4 July 2024] by circulation to the parties or their representatives by email and by release to BAILII</p>

HHJ Malek :

Introduction

1. In this case the Claimant / Part 20 Defendant (“Nationwide”) brings a claim for possession of property at 6 Redburn Avenue, Shipley, BD18 3AY (the “Property”) as set out in its particulars of claim dated 9 March 2020. The Defendant / Part 20 Claimant (“Miss Ramsey”) filed and served a defence and counterclaim dated 6 February 2023.
2. Miss Ramsey obtained a default judgment on her counterclaim on 14 March 2023. Nationwide has not made an application to set aside that default judgment and, in fact, filed a notice of discontinuance on 24 May 2023 in relation to its claim for possession.
3. Following an application to set aside the notice of discontinuance and to reallocate the proceedings to the Multi-Track made by Miss Ramsey, on 28 June 2023 DJ Daniel dismissed Miss Ramsey’s application to set aside the notice of discontinuance and adjourned the application to reallocate these proceedings to the Multi-Track. She re-listed the matter for a further directions hearing with a time estimate of 2 hours “to allow for sufficient breaks” and to consider not only the remaining part of the application, but also to consider whether an assessor was required and whether the final hearing listed for 22 August 2023 could proceed.
4. At the re-listed, hearing which took place on 26 July 2023, Miss Ramsey indicated to DJ Mitchell that DJ Daniel’s order dated 28 June 2023 was incorrectly drafted. He treated Miss Ramsey’s email about this as an application to amend, relisted the hearing before DJ Daniel for 3 hours for her to consider

whether her order required amendment, vacated the final hearing scheduled for 22 August 2023, ordered that Miss Ramsey be provided with a separate waiting room for her exclusive use and indicated that suitable breaks might be required.

5. On 14 August 2023 DJ Daniels made an order without a hearing in which she:
 - i) Amplified the recitals to the order to better explain her order so as to assist Miss Ramsey,
 - ii) Amended her order to a very minor degree under CPR 40.12(1),
 - iii) Re-listed the adjourned hearing before me and released the case to me (with my consent) for future case management, and
 - iv) Defined the issues to be considered at the next hearing.

6. On 29 September 2023 following an oral hearing I:
 - i) Allocated the matter to the Multi-Track,
 - ii) Gave directions relating to disclosure and the filing of evidence,
 - iii) Gave directions in relation to the appointment of an assessor,
 - iv) Gave detailed directions relating to trial (including introducing entire break days, indices of bundles and sequential exchange of skeleton arguments) at Miss Ramsey's request and in order to assist her.

7. On around 8 November 2023 the court listed the matter for trial on 11, 15 & 18 April 2024.

8. On 20 November 2023, at her request, I extended the time for Ms Ramsey to file her final witness statement to 18 December 2023, without a hearing and without considering any representations from Nationwide.
9. On 14 November 2023, Nationwide applied to vacate the trial listed on 11, 15 and 18 April 2024. The basis of that application was essentially that (a) Nationwide's counsel of choice was not available and that the court had listed the hearing outside a window for which counsel's availability had been ordered and provided, and (b) Miss Ramsey consented to the application. On 20 November 2023 I allowed the application on the papers and vacated the trial listed for 11, 15 and 18 April 2024 and re-listed it for the first available date after 24 November 2024.
10. On around 24 November 2023 Miss Ramsey applied to:
 - i) Set aside my order of 20 November 2023, and
 - ii) "to direct that the Claimant completes form N265 with fidelity to CPR 31 on Disclosure and Inspection of documents".
11. The application of 24 November 2023 came to be listed before me on 10 January 2024 by way of oral hearing. At that hearing, and as result of the time required by Miss Ramsey, I was able to deal with the first part only of that application. I declined to set aside my order of 20 November 2023 and gave reasons- the chief of which were that (a) Miss Ramsey had consented to the vacation of the trial only then to seek to withdraw that consent, (b) the application was now academic given that the hearing could no longer be re-listed for 11, 15 & 18 April 2024. As a result, it became necessary to re-list the application for hearing

for me to consider the remainder of it. I provided for a very generous time estimate of 3 hours to ensure progress and to take into account the needs of Miss Ramsey.

12. That brings us to the current hearing. Anyone reading this judgment so far might be forgiven for wondering why this matter has been allowed to progress in the way that it has (entailing as it has done the use of significant court time resource and a worrying amount of satellite litigation). It is not because the court has lost sight of the overriding objective and failed to provide robust directions and impose appropriate sanctions. Rather, it is because, in addition to be a litigant in person, Miss Ramsey suffers from Autism, Severe Anxiety and Depressive Disorder. Miss Ramsey says that this impacts on her ability to communicate and understand information. Although I have not been provided with a CPR 35 medical report setting out the full extent to which Miss Ramsey's conditions impact upon her ability to participate in these proceedings I, like the other judges involved in this case (and for that matter HMCTS), have taken at face value Miss Ramsey's difficulties and sought to be led by her as to the reasonable provision and accommodation that might be made for her. In particular, I have referred myself to the Equal Treatment Bench Book and PD 1A. I can think of nothing that Miss Ramsey has sought by way of accommodation that has not been provided to her. Further, giving credit where it is due, it seems to me that any advocate instructed by Nationwide and who has appeared before me has been reasonable, accommodating and sought to help me in ensuring that Miss Ramsey receives a fair hearing. This has necessarily meant that hearings, in particular, have not only been more frequent, but have taken longer than might otherwise have been the case.

13. So, it was with some alarm and regret that, having allocated 3 hours for the remainder of this hearing, I was unable to give oral judgment as I had intended. This was because Miss Ramsey insisted on interrupting me whilst I attempted to give my judgment. This was despite Miss Ramsey assuring me at this and earlier hearings that she would refrain from further interruptions. It may be that, as Miss Ramsey says, she finds it difficult to stop herself from interrupting when she is upset or when she perceives that someone is saying something that is not true or accurate. Be that as it may, it would clearly be unfair to allow her to interrupt advocates for Nationwide (which she has a tendency to do and which has been borne by the latter with unfailing good grace), any witnesses called or me for that matter during the course of any hearing. Further, as I indicated to Miss Ramsey, it was impossible for me to deliver judgment whilst being constantly interrupted by her.
14. In the end I was left with no choice, but to give my decision to dismiss the application and to order that Miss Ramsey pay Nationwide's costs of and associated with her application and then let the parties know that my reasons would be given in writing subsequently.

**Reasons for dismissing the remainder of Miss Ramsey's application dated
24 November 2023**

15. I intend to keep my reasoning brief. By doing so I hope this will aid clarity and understanding.
16. Before going any further, I should set out the relevant legal principles. In summary when the court is making decisions about disclosure it is obliged to have regard to the overriding objective and limit disclosure to that which is

necessary to deal with the case justly. Ensuirng that cases are dealt with justly and at proportionate cost in compliance with the overriding objective includes, as far as practicable, ensuring that parties are on an equal footing, saving expense, dealing with the case proportionately, expeditiously, fairly, allotting an appropriate share of the court’s resource and enforcing compliance with rule and orders (see CPR 31.7 and 1).

17. The first point to note is that Miss Ramsey seeks that Nationwide completes “form N265 with fidelity to CPR 31”. I agree with Ms. Danks that it is entirely unclear what is meant by this or the legal basis upon which the application is being made. What appears to be sought is a direction that Nationwide complete form N265 properly and in accordance with CPR 31. That is hardly an order that needs making. Nationwide are already compelled, by a combination of my order dated 29 September 2023 and CPR 31, to complete form N265 in accordance with CPR 31.
18. Even if I am wrong about what I say above, Miss Ramsey’s application is misconceived or bad in law for a host of additional reasons.
19. Firstly, Miss Ramsey argues that Nationwide failed to conduct a reasonable search. She grounds this submission in the premise that the person signing form N265 certified that he did not conduct a search of documents that were not relevant to the dispute between the parties in this matter and that the search parameters are unclear and “in dispute” because the “issues in dispute” are not known “or agreed facts”. This is entirely wrong. The issues remaining for this court to determine cannot, in any meaningful sense, said to be in dispute. They are:

- i) Is Miss Ramsey entitled to relief under the Consumer Credit Act 1974 in circumstances where she has admitted the agreement is a regulated mortgage contract, notwithstanding the judgment in default entered,
 - ii) In respect of the alleged breaches of the FSMA, the Equality Act 2010 or the Data Protection Act 2018, as pleaded in her counterclaim can Miss Ramsey establish legal causation (i.e. whether the type of loss is recoverable as a matter of law),
 - iii) In respect of the alleged breaches of the FSMA, the Equality Act 2010 or the Data Protection Act 2018, as pleaded in her counterclaim, can Miss Ramsey establish factual causation (i.e. whether the loss alleged was caused by the breach), and
 - iv) Value.
20. Nor can it be argued that just because the person who has signed form N265 has not set these issues out on the form s/he must be deemed not to know what they are. There is, in my view, no justification for such a conclusion. To set them out again on form N265 would be to simply repeat what is already set out in the pleadings between the parties and there is no requirement to do so. It is no part of Nationwide's duty as a party in these proceedings (albeit I accept that Nationwide might have other duties to Miss Ramsey as a customer) to assist Miss Ramsey in understanding court or other documents.
21. Secondly, Miss Ramsey said that Nationwide has failed to search for documents held on databases and servers. However, she admitted during the course of the hearing to having simply misread form N265. In any event, there is nothing to

suggest that Nationwide has failed to carry out a search for relevant documents on its databases or servers.

22. Thirdly, in form N265 Nationwide indicate that they no longer have in their control (and therefore are unable to disclose) originals of documents that have been lost in the ordinary course of business. This seems to me to be a statement of the blinding obvious, hardly news and a standard term used by many solicitors to populate form N265. Yet, Miss Ramsey seizes upon it to allege that this constitutes an admission by Nationwide of a contravention of Article 32 of the UK GDPR. Extraordinarily, she does so knowing full well (according to her skeleton argument at least) that “data which is lost cannot and is not required to be disclosed under CPR 31”. What she is saying, in effect, is that she knows that the point is not relevant to the issue before me, yet (for reasons which are fairly obvious) she will try and make it anyway.
23. Fourthly, Miss Ramsey says that the search for electronic documents carried out by Nationwide is inadequate because it was carried out by reference to “relevant” customer reference and account numbers. She would like this court to specify the customer and account numbers for the search. During the course of the hearing Mr. Isaacs explained that when referring to “relevant” Nationwide were referring to those customer reference and account numbers involving a mortgage: the purpose being to differentiate between other accounts that Miss Ramsey has with nationwide. That is, on any objective analysis, an entirely reasonable and proportionate way to carry out the required search given the issues remaining at large.

24. Fifthly, Miss Ramsey objects to the removal of “sensitive and personal information” from disclosure. She argues that there is no exemption under UK GDPR and the Data Protection Act 2018 does not define “sensitive and personal information”. She fears that Nationwide might be using this “exemption” to withhold disclosure about her disability. She says that it is impossible for her to know for certain whether data about her disabilities and the names of FCA authorised person have been deemed “sensitive and personal” data and been wrongly withheld. There is not a shred of evidence that this is what is happening. It is common practice for sensitive and personal information, such as the names, addresses, dates of birth, etc. of individual employees to be redacted from documents during disclosure. Mr. Isaacs told me during the course of the hearing that this was exactly what was happening here. Good reasons would need to be provided before an order for specific disclosure of sensitive personal data could be made. The fact that some of the names redacted have already been disclosed or that they are FCA authorised persons (and, presumably therefore, are already in the public domain) does not even come close to being good reasons.
25. Taking a step back I can detect nothing, despite Miss Ramsey’s protestations to the contrary, on the face of the N265 which would suggest that the disclosure exercise carried out by Nationwide has been completed in bad faith or in anything other than a reasonable and proportionate manner.
26. In summary, Miss Ramsey’s application is ill-conceived, totally without merit and falls to be dismissed. It has not only put Nationwide to considerable expense (about which see below) but has wasted considerable court time and resource.

Time and resource which has been denied to other litigants who too have a right to have their cases heard.

Costs

27. The usual rule is that the losing party must pay the winning party's costs, although it is open to the court to make a different order. No good reasons were provided by Ms. Ramsey as to why the usual order should not be made. The fact that someone suffers from a disability or lacks legal representation is neither a trump card nor a good enough reason for me to make a different order. In an adversarial system the role of the judge is to ensure, as far as practicable, that there is an even playing field. Once that is done the chips fall where they may and LIP (even those under a disability), just like everyone else, must face the consequences of their actions.

28. Whilst I would usually order these costs to be paid within 14-21 days and might have been tempted to award them on an indemnity basis given the unmeritorious nature and poor prosecution of the present application, it is a testament to the even-handed way in which Mr Isaacs has sought to pursue Nationwide's case that he seeks neither an award on an indemnity basis nor immediate payment. I, therefore, order that these costs be paid at the conclusion of the case, as sought by Mr. Isaacs.

Closing remarks (not part of judgment)

29. As I write this judgment it occurs to me that, as someone without legal representation, Miss Ramsey might be assisted by some additional remarks from me. As these remarks are unsolicited and made without hearing representations

they are *otiose* and do not form part of my reasoned decision. They are largely for Miss Ramsey's benefit and she may take them or leave them, as she pleases.

30. Firstly, I have no doubt that in Miss Ramsey's mind I have now joined the others that have discriminated against her because she is under a disability. Perhaps getting a sense of the way the wind was blowing, she said so in stringent terms even before I could begin delivering my decision on her application. If Miss Ramsey truly feels that this is the case then she can, if she thinks it desirable, make an application for me to recuse myself from taking any further part in this case. I will, of course, consider any such application in accordance with the law, on the available evidence and with an open mind.

31. Secondly, Miss Ramsey currently has the advantage of a judgment in default. However, it is likely that Nationwide has made an offer or offers to settle the matter. One consequence of a failure to accept an offer to settle (which as a LIP Miss Ramsey may not be aware of) is that if such an offer is not beaten at trial it is likely that Miss Ramsey will have to pay some or most of Nationwide's costs. Those costs could potentially exceed any damages awarded to Miss Ramsey leaving her in a net worse position. She should think carefully on this and the costs consequences of any further interim applications or else she risks a victory that is Pyrrhic in nature.

32. Lastly, as I have already said in this judgment, being without representation and/or suffering from a disability do not represent some sort of "trump" cards to be played whenever things are going against one in litigation. Neither, especially in circumstances where reasonable accommodations have been made, are they good reasons for interrupting advocates, witnesses or the judge

or otherwise disrupting proceedings. Having a disability, or in the words of PD 1A a “vulnerability” (in this case difficulty in communicating and understanding information), entitles a party to seek reasonable and appropriate provision to enable the affected party to participate fully in the hearing. It does not give the affected party carte blanche to do as they please or change the goal posts in terms of the provision required – particularly where reasonable and appropriate provision has already been made in consultation with the affected party. Nor does the absence of legal representation or presence of vulnerability provide for an immunity against criticism. If, contrary to Miss Ramsey’s assurances, she is not able to refrain from interruptions or disruption at any subsequent hearings (if they prove necessary) or trial then it is likely that the trial or hearing will either be greatly lengthened or need to be abandoned altogether. If that proves to be case then Miss Ramsey should be left under no illusion (disability / vulnerability and lack of legal representation notwithstanding) that such action is likely to result in not only a costs award against her; but, very possibly, the striking out of her counter-claim. It will be no answer at that stage, I am afraid, to say that she interrupts because of her disability. There is nothing before me to suggest that Miss Ramsey’s identified conditions mean that she is incapable of stopping herself from interrupting and indeed Miss Ramsey has represented, on numerous occasions in front of me, that she will refrain from further interruptions. In fact, if it was to be the case that there could not be a physical oral hearing with Miss Ramsey present where she could be relied upon not to interrupt and thereby disrupt the proceedings then I would simply not have ordered a 3 day trial without, at the very least,

putting in place stringent safeguards to protect against Miss Ramsey's disruptions, in the interest of fairness to Nationwide.