IN THE HIGH COURT OF JUSTICE No. QB-2021-004502

QUEEN'S BENCH DIVISION

[2021] EWHC 3633 (QB)

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 17 December 2021

Before:

MR JUSTICE JACOBS

BETWEEN :

MOHAMED ALI ABBAS RASOOL

Claimant

and

PADDINGTON COMPANY ONE LIMITED

Respondent

AND

BETWEEN:

PADDINGTON COMPANY ONE LIMITED

Claimant

and

MOHAMED ALI ABBAS RASOOL

PERSONS UNKNOWN

Defendants

THE CLAIMANT appeared in person.

MR T. GALLIVAN appeared on behalf of the Respondent.

JUDGMENT

(Remote hearing)

MR JUSTICE JACOBS:

1
I am dealing in the present case with two applications. There is an application by the claimant, Mohammed Ali Abbas Rasool ("Mr Rasool" or "the claimant"), to continue a without notice injunction granted by Julian Knowles J pursuant to an out of hours application on 29 November 2021. That was an application made on a without notice basis, supported at that stage by unsigned and undated particulars of claim, to which I will return in due course. There have been a number of attempts, if I can call them that, to have the return date of that original injunction heard. However, for reasons which it is not necessary to explain in detail at this stage, the matter has been adjourned on at least two occasions, most recently before me last week. It has now come back to me today on this return date. Despite obtaining an injunction, and despite the order of Julian Knowles J on 29 November 2021 requiring Mr Rasool to issue a claim form, no claim form has in fact been issued. Accordingly, there is no claim number to which Mr Rasool's proceedings (referred to in the title of the action in this judgment) relate.

2
I am also dealing with what could be regarded as a cross-application by the respondent, Paddington Garden Co Ltd ("Paddington Garden" or "the defendant") represented by Mr Gallivan, for a possession order against a trespasser under CPR part 55, Section 1. [1] In contrast to Mr Rasool, Paddington Garden has issued proceedings, and the claim number in the heading of this judgment (QB-2021-004502) relates to that action. The basis of Paddington Garden's case is that, contrary to Mr Rasool's case and contrary to the basis on which the injunction was obtained from Julian Knowles J, Mr Rasool has never had any tenancy agreement with Paddington Garden. He is therefore a a trespasser in the property to which he has succeeded in gaining access, largely as a result of the order which was made by the court on the without notice application.

3
There is an overlap to some extent between the issues which arise on the applications for the injunction and for the possession order. The test for an injunction is well established: there must be a serious issue to be tried; damages must not be an adequate remedy; and the balance of convenience must favour the grant of the injunction. The question of serious issue to be tried is a substantial issue in this case; because Mr Gallivan submits that this is a case where he is entitled to a possession order on the basis, applying the test in CPR 55.8, that Mr Rasool is a trespasser and that Paddington Garden's claim for possession is not "genuinely disputed on grounds which appear to be substantial." Clearly, if Mr Gallivan is right on that submission, there would be no serious issue to be tried for the purposes of Mr Rasool's application for injunctive relief. Equally, if Mr Gallivan is wrong on that point, and the claim is genuinely disputed on grounds which appear to be substantial, then the serious issue to be tried threshold would be crossed.

4
The test for the grant of a possession order in the context of CPR 55.8 has been the subject of a recent decision in Global 100 v Laleva [2021] EWCA Civ 183. At paragraph [14], Lewison LJ equated the test

under that provision with the test which is applicable to applications for summary judgment. He referred in that context to the well-known decision in Easyair Ltd v Opal Telecom Ltd, a decision his own at first instance, which is regarded as the classic case nowadays for identifying the test for summary judgment. In that case, Lewison J set out a number of principles. These include the following:

(i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success.

(ii) A realistic claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.

(iii) In reaching its conclusion the court must not conduct a 'mini-trial'.

(iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases, it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.

(v) In reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial.

5
Those are the legal principles but there is one further legal principle which is of relevance to the present case. It is well established that an applicant for a without notice injunction has an obligation of full and frank disclosure and must in substance inform the judge of matters which would be relevant and material to the judge's decision as to whether to grant the injunction.

6
The injunction in the present case appears to have been granted by Julian Knowles J on the basis of the documents alone, and without any oral submissions. It does not appear from the documents that Mr Rasool was represented by counsel at that stage. What is clear, however, is that Mr Rasool personally was aware of his obligation to give full and frank disclosure. This is because it was a point which had been made to him expressly in the context of proceedings which he had commenced relating to another property, this time in Mayfair, in proceedings called the "Proud Honour" case in the hearing before me. Those proceedings had the case number QB-2021-002868. On 2 August 2021, Kerr J had dismissed Mr Rasool's application for an injunction in those proceedings. He had given an ex tempore judgment in the absence of Mr Rasool. His order had then contained a number of paragraphs under the heading: "brief observations". In those observations, he raised issues as to whether or not Mr Rasool had fulfilled his duty of full and frank disclosure.

7
There are in the present case two essential aspects of the case of Paddington Garden that there was a lack of full and frank disclosure by Mr Rasool. I will deal with the chronology in more detail in due course. In summary, however, the first aspect concerns Mr Rasool's failure to tell Julian Knowles J that, only some two to three weeks earlier, an application for an injunction relating to the same property with which I am presently concerned, namely 406 Betula House, Paddington Gardens, North Wharf Rd, London W2 1DT, had come before Foster J. In that case too, proceedings had started with a without notice application by Mr Rasool. The case had subsequently come back before Foster J on two occasions. I will again deal with the detail of what Foster J said but, in summary, she refused to grant

the injunction and she raised pertinent questions as to the factual basis for it. Julian Knowles J, on the material which I have seen, was told nothing about those earlier proceedings relating to the very property which was the subject of the application before him. There is nothing in any of the moving papers which indicates that he was given any indication as to what had happened between 12 and 19 November, some two to three weeks before the matter came before him.

8
That is a surprising non-disclosure, in the sense that it seems very obvious that those matters should have been disclosed. But the second aspect of the nondisclosure is even more surprising – both as to the circumstances which arose, and the fact that they were not disclosed.

9
During the course of the hearing over which I presided last week on 8 December 2021, a question arose as to whether Mr Rasool had issued a claim form as Julian Knowles J had required him to do. This led to my clerk searching the court CE file system in order to see whether a claim form had been issued. The answer that was revealed at that stage, and is still revealed by searches carried out this afternoon, is that it had not been. But, more significantly in the context of non-disclosure, the search revealed that there were other proceedings which had been begun by Mr Rasool during the course of this year. Further work that was carried out has revealed that there were two sets of proceedings in which Mr Rasool put in evidence and advanced a case for injunctive relief. That case. in both sets of proceedings, was based upon the occupation which he and his sister allegedly had of different premises but during the same period of time as the allegation, in these proceedings, that he was in occupation of Betula House.

10
The first set of proceedings - and again I will come back to this in the chronology in due course - is the Lonpane Investment case. Those are proceedings by Mr Rasool against Lonpane Investment Ltd. The case number is QB-2021-002928. The second proceedings are the proceedings concern Proud Honour Ltd. Those are proceedings by Mr Rasool with the case reference is QB-2021-002868.

11
As a result of the research by my clerk, who spoke to the clerks to other judges who had been concerned with cases brought by Mr Rasool, I made two orders in the course of this week. These asked and required Mr Rasool to provide an explanation as to how it was that. in the present proceedings, he is alleging the occupation of Betula House for a period of at least two years, whereas in proceedings started earlier this year he had alleged that he and his sister occupied two different properties during the same time period. No explanation was in fact provided until this afternoon, well after the time limit which I had imposed. The explanation which has been provided by Mr Rasool, in a witness statement provided to the court this afternoon, is that mistakes were made in the moving papers in those other cases, and that he did not properly explain that he personally was not in occupation of either of those two premises. In the case of Lonpane Investment, the property in Oxford Street is alleged to have been occupied by his sister, not by Mr Rasool. In the case of Proud Honour, the property at Bloomfield Court, Bourdon Street, London W1K 3PU is said to have been occupied by an unnamed cousin. He says that the injunctions were applied for on behalf of his sister and his unnamed cousin.

12
The explanations which he has provided, in my judgment, lack any conviction whatsoever. The witness statement in the Lonpane Investment case gives Mr Rasool’s address as 395 Oxford Street, asserts

that he had been at that property since February 2000, and that he was now homeless. Mr Rasool's latest witness statement indicates that none of this was actually the case.

13
The witness statement in the Proud Honour case gives Mr Rasool's address as Flat 10, Bloomfield Court, Bourdon Street. It asserts that he was locked out after having been away from the property for 2 days, and that he had been at the property for 8 months, the tenancy having started in September 2020. He was now "being forced to sleep with friends and have been forced to be assisted by a nearby charity". Mr Rasool's latest witness statement indicates that none of this was actually the case. His case in the present proceedings is that, far from being made homeless or having to sleep with friends, he has been in occupation of the Betula House property since December 2019.

14
I consider that applying the principles in the Easyair case, Mr Rasool's explanation can quite properly not be accepted by the court.

15
Nor do I accept that, as Mr Rasool asserts, the same direct access counsel was acting for him, and did not indicate to him that there was anything wrong in presenting the evidence in those two proceedings in the way that he did. The documents indicate that he had a direct access counsel for the out of hours application in the Lonpane Investment case. There is, however, nothing to indicate that the same counsel appeared in Proud Honour. In any event, I am presently considering non-disclosure in the present case concerning Paddington Garden. There is nothing to suggest that any counsel in the present case had acted in either of Lonpane or Proud Honour.

16
For present purposes, where I am concerned with non-disclosure, the significant point is that Julian Knowles J was not told that, within the relatively short time before the application before him in November 2021, Mr Rasool had sought and obtained injunctive relief based on materially identical allegations as to ownership and exclusion from property, but that those allegations concerned different properties to those with which Julian Knowles J was concerned.

17
It seems to me, for reasons which will become more apparent when I describe the chronology in more detail, that in both respects there was a plain failure of full and frank disclosure. Both matters were clearly material to the judgment of the judge on the without notice application and I have no doubt whatever that the injunction should be discharged on that basis alone.

18
However, the matters with which I am concerned cannot rest there, because the positive case of Mr Gallivan, on behalf of Paddington Garden, is that I should grant a possession order. It seems to me, again for reasons which will become apparent when I explain the chronology in more detail, that that is a course which I should adopt and I propose to make such an order. The essential reasons for that are in summary as follows.

19
First, Mr Rasool's case as to occupation of Betula House has no credibility at all, in view of the wholly inconsistent allegations of ownership of other properties which have been made in relatively recent times in prior proceedings. I do not consider that any convincing or credible or tenable explanation has been given as to how it can be that Mr Rasool can come before this court on three separate

occasions alleging ownership, occupation and eviction from three different properties, overlapping in time, with the same essential case being advanced concerning the circumstances of his eviction.

20
Secondly, it seems to me that there are substantial questions which arise, and which have been the subject of prior court orders, as to the genuineness of the documentation which Mr Rasool has put forward and as to his case that he has been in occupation of Betula House for some two years and has been paying rent for some of that period. There has been clear evidence from Paddington Garden in these proceedings, both before me and, indeed, in a brief email that was shown to Foster J, to the effect that no tenancy was ever granted to Mr Rasool. In fact, a tenancy was granted to a company called Rami News Ltd, but the evidence of Paddington Garden is that that company abandoned the property some time ago. The documents relied upon by Mr Rasool in order to establish his alleged entitlement to a tenancy have dribbled out in an unsatisfactory way, giving rise to legitimate questions as to their provenance and as to what they show. Orders have been made which have required information to be provided in different ways and, to my mind, none of that information has been provided.

21
Therefore, if I consider all of these matters together – the lack of proper information provided by Mr Rasool, the clear evidence from Paddington Garden, and statements made in prior proceedings as to Mr Rasool's occupation of different properties – I have no doubt that this is a case for an interim possession order pursuant to CPR 55.8 because the claim is not genuinely disputed on grounds which appear to be substantial.

22
Having identified my conclusion and the essential reasons for it, I will now deal in a little more detail with the chronology so that anyone who reads this judgment will understand how matters have developed and also what I regard as the factual position as shown by the documents.

23
I will refer in this context to the other two sets of proceedings as the Lonpane Investment case and the Proud Honour case. It is also to be noted, however, that there are further documents, which I saw yesterday, which show that there has been yet a third prior claim. This was in fact the first claim in the sequence of injunctions sought or obtained by Mr Rasool against various defendants based on similar allegations of occupancy and eviction from different properties. The defendant in that first case was Mr Amjad Yassawi. An application was made to Mellor J in June 2021 on a without notice basis. This was based upon an allegation of a tenancy at Flat 54, Princes Court, 88 Brompton Road, London SW3 1ET. It was based upon very similar allegations to the allegations which I will describe in due course: the allegation was that this property had been occupied since February 2000. I mention this case for completeness, and have provided documents relating to the case to the parties today. But it is not a relevant part of my reasoning in the present case, because the story in relation to the Lonpane Investment case and the Proud Honour case is sufficient for the purposes of the decision which I have made.

24
In very broad summary, the position is that on 30 June 2021, the claimant applied on a without notice basis, using direct access counsel, for an injunction against an alleged unlawful eviction by Lonpane Investment. The property which was the subject of the injunction was 395 Oxford Street, London W1C 2JX and Mr Rasool alleged that he had been unlawfully evicted on 6 June and on 30 June 2021. That

application was granted by Calver J on a without notice basis. The witness statement in support essentially raised the same factual case, save for dates, as the case raised in the present proceedings.

25
There were then subsequent applications within those proceedings. On 6 July 2021, Mr Hugh Southey QC had to deal with an application by Mr Rasool for committal of the respondent. That application was adjourned. On 10 July 2021, a witness statement was served on the part of Lonpane Investment, alleging that the claimant's tenancy of the premises had come to an end in March 2021. Various other orders were sought. On 13 July 2021, Mr Southey QC stayed the order of Calver J. On 19 July 2021 there was a further application by Lonpane Investment for an order excluding the claimant from approaching or entering the premises. In due course, the further hearing took place on 21 September 2021 before Michael Kent QC, sitting as a deputy High Court judge. Mr Rasool failed to attend and the application which he had made for an injunction, and which had originally been granted by Calver J, was dismissed. The order of Calver J was discharged except for any application to enforce the undertakings which Mr Rasool had given.

26
Following the dismissal of the case, Mr Rasool applied to set aside the order which had been made by Michael Kent QC. Henshaw J, in a hearing on 27 September 2021, gave certain directions. Those directions do not appear to have been complied with by Mr Rasool, and there has been no further conduct by Mr Rasool of that case.

27
More or less at the same time or just after those proceedings, the Proud Honour proceedings were started. The claimant applied on 26 July 2021 without notice for an order for re-entry to Flat 10, Bloomfield court, Bourdon Street, Mayfair, London W1K 3PU. In that case, he alleged that there had been a tenancy for a term of one year commencing on 10 September 2020. In common with many of the applications in this case, the application was supported by an unsigned witness statement. On 26 July, the application was adjourned by Pepperall J and the matter then came before Kerr J who had in the meantime raised some highly pertinent questions as to the factual basis of the application. None of those questions had been answered by the claimant and, on 2 August 2021, Kerr J dismissed the claimant's application. In so doing, as I have said earlier in this judgment, he raised questions and drew attention to the claimant's duty of full and frank disclosure. In fact, on 4 August, belatedly, the claimant responded to at least some of the questions which have been raised by Kerr J but, by that time, the application had been dismissed and no further action has taken place on that case.

28
Matters then moved to the proceedings concerning the present property. The first set of proceedings came before Foster J in the following circumstances. On 12 November 2021, the claimant applied without notice, and with no claim form, but supported by a signed and dated witness statement, for re-entry to the property with which I am concerned at 406 Betula House. The application concerned alleged unlawful eviction on 6 November 2021 and 12 November 2021. On 15 November 2021, an order was made by Foster J. The substance of the order was to make no order on the application but to require service on the defendants (Paddington Garden) by email. Mrs Justice Foster noted in her observations that the claimant appeared to be representing himself. She referred to a tenancy agreement which had been exhibited by the claimant, but she said that he had not exhibited any correspondence with his landlord evidencing communications as to the alleged lockout/eviction. Nor were there any particulars of claim setting out in pleading form the nature of the rights he asserts.

29
It remains a feature of this case, relevant to my decision that there is no credible case advanced by Mr Rasool, that I have not seen any communications between the parties as to the alleged lockout or, indeed, any communications between the parties to speak of at all.

30
Foster J also noted that a mandatory injunction is a draconian remedy and that the court must hear from the defendant before any further consideration of the matter. She adjourned the matter to a hearing at 2 p.m. on 16 November 2021, which was the following day. On the morning of 16 November 2021, a short email was sent by the defendant, Paddington Garden, from Mr Mohammed Noori. This set out in summary the case which was advanced on that occasion and which remains advanced in these proceedings today. The email said,

“(1) In December 2019, we agreed a tenancy agreement in relation to the property with Rami News Ltd (tenancy agreement attached).

(2) That tenancy agreement expired in December 2020. However, as far as we are aware, the property has been vacant since March/April.

(3) We note that the attached order refers to a tenancy agreement held by Mr Rasool. However, we have not been sent a copy of any tenancy agreement and so have not had sight of this.

(4) We note that Mr Rasool failed to serve the order by the required time.

(5) We have not been sent the tenancy agreement or any correspondence evidencing communication as to the alleged lockout/eviction or with any particulars of claim. We are not aware of the tenancy agreement or Mr Rasool’s claim to be entitled to occupy the property prior to receipt of the email referred to above yesterday afternoon.”

Paddington Garden therefore requested that Mr Rasool’s application be dismissed.

31
The matter then came back before Foster J on the following day. She made an order that unless the claimant, Mr Rasool, do appear in the Interim Applications Court of the Queen’s Bench Division on Friday, 19 November 2021, to support his application for an urgent interim injunction, this matter shall stand dismissed. She then gave, in 7 numbered paragraphs, some observations. In paragraph 2 she noted that the relevant tenancy agreement relied upon was not with the claimant, Mr Rasool, but with Rami News Ltd. She pointed out that the defendants had said that that had come to an end. In paragraph 3 she said that the application had been adjourned until Friday morning to give Mr Rasool an opportunity to take advice and/or support his application, which would be struck out if he again fails to attend. I should interpose to say he had failed to attend before Foster J on the 16th. She added that he must also note he will be required to support his case by means of pleadings sooner rather than later. She said that the proposed defendant had not been ordered to attend but may of course do so. She attached a copy of the defendant’s email as an annex to the order.

32
The matter was therefore due to come back to the court on the Friday morning, 19 November 2021. It did come back to the court on that occasion, but Mr Rasool failed to appear on 19 November and therefore the case was dismissed pursuant to the order of 16 November 2021.

33

In my judgment, it is clear beyond any sensible argument that that sequence of events should have been disclosed to Knowles J. There was the clearest possible non-disclosure for which, in my view, no proper explanation has been given.

34
Insofar as an explanation has been given, the suggestion from Mr Rasool is that it was not necessary for him to appear, because he had reached an agreement with Paddington Garden which meant that he was being allowed back into the property and therefore it was no longer necessary to appear.

35
There are two points about that. First, the position is that there has been no correspondence or any documents produced by Mr Rasool evidencing the agreement to allow him back into the property. If this had been the agreement, against the background of the points which had been raised in Paddington Garden's email to Foster J, then it would obviously have been a matter which would be recorded in writing. Paddington Garden had set out very clearly their position that there was no tenancy agreement with the claimant, and they had resisted the application for the injunction on that basis. The idea that they would subsequently simply agree to give the property back to the claimant, and do so without any documentation, is fanciful.

36
Secondly, and in any event, one of the points raised by Mr Gallivan, which is a fair point given the documents and inconsistencies in the overall documents served by the claimant, is that the case of being allowed back into the property is not the case which is set out in the draft particulars of claim which were in due course provided to the defendant. Paragraphs 1 and 2 of the particulars of claim plead that there was an unlawful eviction on 12 November when the locks in the property were changed and on 29 November a promise by the defendant to be reinstated. The particulars of claim go on to say, "However, until now this has seemed like a false promise." So, the case advanced in the pleading which, as I understand it, Mr Rasool says is a mistake, was that it was only on 29 November 2021 that any promise of re-entry was allowed. So, a promise of re-entry, undocumented as it is, cannot, in my judgment, provide any credible explanation for the claimant's failure to appear on either 16 or 19 November before Foster J.

37
The position then is that some 10 days later, on 29 November 2021, the claimant applied before Julian Knowles J. As I have said, the claimant told Julian Knowles J nothing about the events before Foster J. There has been some suggestion that Julian Knowles J's clerk was told something about the prior applications, but there is no documentation which substantiates that. It is well known that the duty of full and frank disclosure must be fulfilled by putting clear documentation before the judge who, in this case, was dealing with a matter out of hours and on the basis of documents. It is not a duty which can be fulfilled by an alleged and undocumented oral discussions with a judge's clerk.

38
Julian Knowles J did then grant an injunction, effective for a short period, requiring the defendant to give access back, as he understood it, to the claimant. He ordered a further hearing on 30 November 2021 not before 2 o'clock, and also that a claim form should be issued. As I have indicated, the current position is that no claim form has been issued according to the court file. It is clear in any event that no claim form was issued promptly following Julian Knowles J's order.

39

The matter then came before Julian Knowles J on 30 November, at which point both parties were represented by counsel and a signed witness statement and statement of truth had been put in by Mr Noori on behalf of the defendant. The order which Julian Knowles J made was continued, with directions for evidence and submissions. But the substance of the respective parties' cases was not dealt with, and it was adjourned until 8 December 2021, not before 2 p.m. It was at that stage that I became involved as the judge. I read into the case on the morning of 8 December. By that time, a skeleton argument from Ms Hall, counsel the Paddington Garden had been produced. A skeleton argument from Mr Rasool's direct access counsel, Mr Richard Hendron, had also been submitted.

40
The position on the afternoon of 8 December was not satisfactory. Mr Rasool appeared (at the in-person hearing) on his own behalf, but Mr Hendron did not appear at all, despite having submitted a skeleton argument. Mr Rasool gave me to understand Mr Hendron could have appeared remotely on that afternoon but had been told by the court that there had to be an in-person hearing. (In correspondence subsequent to the hearing, Mr Hendron has said that this was not in fact the position). At all events, the position on 8 December was that it seemed, owing to Mr Hendron's absence, that Mr Rasool had been left without any representation, allegedly through no fault of his own. I was not able to get to the bottom of that on that afternoon. It seemed to me to be appropriate for the matter to be adjourned and for the matter to come back the following week and, in the event, it has come back before me.

41
However, it did seem to me, having read into the case and based on points taken by Ms Hall (counsel for Paddington Garden on that occasion), that there were substantial and potentially important factual holes or at least difficulties in the case which Mr Rasool was advancing. It was clear that further information was necessary in order for the claimant's case to be understood and to be supported. That was why an order was made by me on 8 December 2021 requiring certain information to be provided.

42
Paragraph 2 of my order therefore provided for the inspection of certain originals of the tenancy agreement and a bank statement which had been produced by the claimant. These were to be made available for inspection on a date and time to be agreed, but no later than 4 p.m. on 13 December 2021, at 5 Paper Buildings, Temple, London EC4Y 7HB or such other address as the parties may agree. A witness statement of Mr Andrew Archbold has been served on behalf of Paddington Garden. He turned up for the meeting which had been arranged but his evidence, which I have no reason to think is inaccurate, is that Mr Rasool did not turn up by the 4 p.m. deadline. Mr Archbold waited until 4.35 pm and then left. Mr Rasool has told me on the phone this afternoon, although this is not supported by anything in his witness statement, that he did in fact turn up and at one stage he told me, as I understood it, turned up at 4.15. I am not persuaded that that happened. If there had been some difficulty in providing the information on that day, because Mr Rasool was stuck in traffic or for some other reason, then I would have expected Mr Rasool to explain that in subsequent days to the defendant, in order to make sure that a further appointment could be made. That did not happen.

43
More significantly, in paragraph 3 of the order, I ordered that the claimant should, by no later than 4 p.m. on 13 December, provide a further witness statement, signed with an appropriate statement of truth, setting out a number of matters. Those included any factual evidence he wished to adduce in response to the defendant's non-disclosure argument. (At that stage, the defendant was relying upon non-disclosure of the proceedings before Foster J). Paragraph 3 also ordered that the witness

statement should also contain other matters. These essentially concerned the merits of the case as to whether there was a tenancy agreement at all. For example, subpara. 3(e) required an explanation as to why it was that the tenancy agreement served on the defendant on 6 December 2021 was not produced at an earlier stage; and, in particular, why it was not relied upon in the application dated 12 November 2021, or in the application determined on 29 November 2021, and why a different tenancy agreement was relied on in those applications. None of that evidence was produced in response to that order.

44
In the course of today's hearing, Mr Rasool told me that he had in fact produced a witness statement by 13 December 2021. He sent me a document and Mr Gallivan a document in the course of this afternoon's hearing which purported to be that witness statement. There was some delay, even this afternoon, in Mr Rasool sending me this witness statement, after being requested by me to do so. In fact, the witness statement which he produced at around about 3 o'clock this afternoon, and dated 13 December 2021, was simply the same witness statement which had previously been produced in these proceedings dated 3 December 2021. It did not address any of the issues raised in paragraph 3 of my order of 8 December. I am not persuaded that any witness statement was in fact produced, or served upon the defendant, on 13 December 2021.

45
Subsequent developments were as follows. I made orders on 14 and 16 December which related to the Lonpane Investment case and the Proud Honour case and required the defendant, if he wished to explain what had happened, to provide evidence by a certain time. That evidence was not provided in time but was subsequently provided very shortly before today's hearing began. I have already expressed the view that the explanations provided in that witness statement lack any conviction. The position is that in the present proceedings Mr Rasool has said that he was in occupation of the Betula House property with his sister. There is no conviction in his explanation that he made mistakes, as he suggested, in previous proceedings, by not explaining that in fact the occupants were his sister and his cousin, and that he was not in occupation.

46
Having been through the chronology of the relevant matters, it seems to me that this is a clear case where the injunction which was granted by Julian Knowles J should be discharged on the basis of a failure to make full and frank disclosure. I do not consider that there is any serious issue to be tried as to the tenancy. It does seem to me that there has been a total failure by Mr Rasool to comply with the requirements of the order which I made on 7 December which were directed towards his providing some evidence in relation to questions which naturally arose from the documents which he had hitherto provided. For all the reasons I have given, I also do not consider that there is any credible case advanced by Mr Rasool as to the existence of a tenancy with him. I therefore conclude that the claim by Paddington Garden is not genuinely disputed on grounds which appear to be substantial.

47
I will therefore make an order discharging the injunction and I will make a possession order against a trespasser pursuant to CPR part 55.

(LATER)

48
I will hear Mr Rasool on the question of costs, in particular on the issue of indemnity basis or standard basis. I will give you, Mr Gallivan, permission to apply in writing either for a summary assessment of

costs or for a payment on account of costs, on notice to Mr Rasool. I will determine any issues as to quantification of costs in writing on the basis of the parties' written application. So, you must make an application in writing to me. It can be done simply by sending the materials to my clerk. They must be served on Mr Rasool. He must be given, I would say, seven days to reply to any submission. You can have three days to reply to whatever he says and I will then determine the question of costs on the papers. You can record that in the order.

(LATER)

49
Mr Gallivan, I will order costs in this case on an indemnity basis, given the facts set out in my judgment. I do regard, for reasons which will be apparent from the judgment, the application for the injunction as being totally without merit.

(LATER)

50
Mr Rasool, you started these proceedings, you claimed an injunction. This is the return date. You have failed on your application on the return date and you must pay the costs of the proceedings. The application for possession is in many ways the other side of that coin. I see no reason to distinguish between those two sets of costs. I remain of the view that you must pay the costs of the defendant on the injunction which, in my judgment, should never have been obtained. It should never then have been maintained when the defendant sought to set it aside.

(LATER)

51
I am ordering both sets of costs because Mr Rasool's application for the injunction has failed on the basis that he has not shown a serious issue to be tried and there has also been a failure to provide full and frank disclosure. The case that the claim is not genuinely disputed on grounds which appear substantial has succeeded. Mr Rasool should therefore pay the costs of resisting the claimant's case in that regard.

(LATER)

52
I have to say, as you will have gathered from my judgment, that I am very concerned that the court should have been presented with a case by Mr Rasool alleging that he was living in this particular property for some time, in circumstances where he had made allegations in other cases that he was living in different properties at the same period of time. There is a question which arises in this case about whether the witness statements which were put in, supported by statements of truth, are such as to give rise to contempt proceedings. It is something that a judge can raise of his own motion, but he can also enlist the assistance of other parties or the party which has been successful. This seems to me to be something which I am going to invite you, Mr Gallivan, to consider with your clients, namely as to whether there should be contempt proceedings in this case. I am not saying there should be. There would have to be permission given by someone.

53
What I am therefore minded to do is simply say to you that that is something to be considered. It is a more powerful weapon to some extent than a CRO, potentially, but you should have permission to apply for a civil restraint order. I would like to look back at the authorities before considering whether

a CRO should be made. One of the things which concerns me about a civil restraint order is that normally you get at least two goes. Normally you have at least two “totally without merits” before you can get an extended CRO. This is the first one, because none of the other judges certified the case before them as totally without merit. This was not because they did not think about it, but because they did not really have the materials and overall perspective that I have got. This is the first TWM, and I am inclined to think that civil contempt is possibly perhaps a better route.

54
I will give you liberty to address me further on that and it is something you can discuss with your clients. They may decide they are not interested or it is not appropriate, but I think it is something that I should raise as a possibility.

---

[1] At the hearing, Mr Gallivan had described his client’s application as being for an interim possession order pursuant to Section III of CPR Part 55. Subsequent to the hearing, and prior to the order being sealed, Mr Gallivan said in an e-mail sent on 20 December 2021: “ I was mistaken in informing the Court that my client was applying for an interim possession order under Section III of Part 55 rather than an Order under Section I of Part 55. The application was a possession claim against trespassers pursuant to r.55.1(b) and service was effected on Mr Rasool and Persons Unknown under r.55.5. Mr Rasool is not prejudiced by this error. The test under Section I of Part 55 for making the order is the same as that applied by Jacobs J, namely, whether the claim is genuinely disputed on grounds which appear to be substantial (as explained by the Court of Appeal in Global 100 Ltd v Laleva , to which Jacobs J referred). The situation is more advantageous to Mr Rasool than if an interim possession order had been made in that he is not required to vacate the premises within 24 hours of service of the Order (failing which he would commit a criminal offence). Enforcement of the Order will be effected by the High Court Enforcement Officers in the usual way following its service and there will be no criminal liability in the event that the Defendants remain in possession until the Order is enforced ” .