



Neutral Citation Number: [2022] EWHC 2345 (Ch)

PT-2021-000360

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUST & PROBATE LIST

IN THE ESTATE OF HAZEL MARGARET TOTTON (DECEASED)

Before:

MR JUSTICE LEECH

B E T W E E N:

(1) HOLLIE LOUISE TOTTON
(2) DANIEL ROBERT WASHER
(AS BENEFICIARIES OF THE ESTATE OF
HAZEL MARGARET TOTTON
(DECEASED))

Applicants

- and -

MARK DAVID TOTTON
(AS BENEFICIARY AND EXECUTOR OF
THE ESTATE OF HAZEL MARGARET
TOTTON (DECEASED))

Respondent

MS VICTORIA ADAMS (instructed by **Pinney Talfourd LLP**) appeared on behalf of the Claimants.

THE DEFENDANT in person.

Hearing date: 15 September 2022

APPROVED JUDGMENT

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic

Mr Justice Leech:

Introduction

1. By Application Notice dated 5 July 2022 (the "**Committal Application**") the Applicants, Hollie Louise Totton and Daniel Robert Washer, applied for an order for committal for contempt of the Respondent, Mark David Totton. On 31 August 2022 I heard the Committal Application in the absence of the Respondent and delivered an *ex tempore* judgment which I have now approved. I held that it was appropriate to hear the application in the absence of the Respondent. I also found that the Respondent was in contempt of court in that:

(1) He had breached, and remained in breach, of paragraph 7 of the Order of Mr Justice Meade dated 10 March 2022 (as amended on 29 April 2022) (the "**Order**") by failing to comply with its terms by 7 May 2022; and

(2) He had breached, and remained in breach, of paragraph 9 of the Order by failing to comply with its terms by 21 May 2022.

2. I made an Order for the Committal Application to be listed before me on Monday 12 September 2022 at 10.30 am at which the Court would consider the sentence to be imposed on the Respondent for the contempt of court which the Court had so found. I made an order for the Defendant to attend that hearing but he failed to appear at the hearing and I issued a bench warrant to secure his attendance. On 14 September 2022 the bench warrant was executed and he was brought before me today, 15 September 2022.

3. I invited the Respondent to address the Court before I made my sentencing remarks. At the hearing, he admitted that he had breached the Order and apologised to the Court. He also said that he had had buried his head in the sand and received a number of envelopes which he just left unopened. I informed him that he had a right to legal aid and that I would consider adjourning the sentencing hearing to enable him to take legal advice and he accepted that he needed legal advice. I also asked him whether he would comply with the Order if I gave him one last chance to do so. He said that he would. He also expressed a sense of relief at the issue finally coming to a head. In the event, I decided to proceed to give judgment in relation to sanction and in this second, short

judgment I set out my sentencing remarks.

Sentence

4. In *Solicitors Regulation Authority Ltd v Khan* [2022] EWHC 45 (Ch) I set out the general principles which the Court must apply in deciding what sentence to impose for contempt of court: see [52]. I also set out the criteria which Miles J had applied in *Law House Ltd (In Administration) v Adams* [2020] EWHC 2344 (Ch) in assessing the seriousness of the contempt in question and deciding what sanction to order: see [52]. I have those general principles well in mind and I adopt those criteria in the present case although I do not repeat them here.

(a) Prejudice or Harm

5. I am satisfied that the Applicants have suffered significant prejudice as a consequence of the Respondent's conduct, as I found when I decided to hear the Committal Application in the Respondent's absence. On 25 July 2019 the Deceased died and on 27 November 2019 a grant of probate was issued to the Respondent. The evidence shows that the Deceased's home, which is the estate's principal asset, was sold on 7 April 2020 for £425,000. Both Applicants are young people and have been kept out of their share of the estate for almost three years and over two years since the principal asset was sold.

(b) Pressure

6. There is no evidence that the Respondent acted under pressure from third parties to commit the breaches of the Order.

(c) The nature of the Breaches

7. I was prepared to draw the inference that the Respondent was aware that he was committing breaches of the Order and he has remained in breach and done nothing to comply with the Order since 21 May 2022. Nothing which the Respondent said to the Court this morning suggested that the breaches of the Order were other than deliberate. The Respondent accepted that he was in breach of the Order and that he had buried his head in the sand. I am satisfied that the breaches of the Order were serious.

(d) Culpability

8. For the same reasons the degree of culpability was high. The Respondent has failed to engage with the legal process at all throughout the proceedings and even when the Applicants issued the Committal Application. He has had every opportunity to comply with the Order but has failed to do so. I am satisfied that he has deliberately failed to comply with his duties as an executor and deliberately ignored the Order. Again, nothing which he said to the Court today suggested otherwise.

(e) Third Parties

9. The Respondent is the sole executor of the Deceased's estate and he has not instructed solicitors to assist him. He is solely responsible for the breaches of the Order and has not been placed in breach of them by the conduct of third parties.

(f) Seriousness of the Breach

10. I have already found that that the breaches of the Order were serious and that the Respondent has remained in breach of the Order for a significant period of time. The Respondent made no attempt to acknowledge either the breaches themselves or their seriousness until he was brought before the Court this morning.

(g) Co-operation

11. The Respondent has not co-operated with the Applicants or their solicitors or made any offer to do so. He also failed to come to Court when ordered to do so. I make no discount for co-operation.

(h) Admission

12. The Respondent made no admission that he had acted in breach of the Orders or that he was in contempt of court until this morning when he made a full apology to the Court. In assessing the length of sentence (below), I make a discount for the admission and apology today.

(i) Mitigation

13. The Respondent has offered no mitigation. There is no evidence that he has a criminal record but equally there is no evidence that he was suffering under a disability or unable to comply with the Orders or that it was difficult for him to do so. He expressed no remorse and no willingness to comply with the Order until the hearing today. Apart

from his admission and apology, I cannot take into account any mitigation.

(j) Sentence

14. I have carefully considered whether a fine would be a sufficient penalty and taken into account the fact that a custodial sentence should only be imposed as a last resort. But in my judgment the Respondent's conduct amounts to "serious, contumacious flouting of orders of the court" and merits an immediate custodial sentence of a significant length.
15. Given the various factors which I have considered, the minimum sentence which I could properly impose is four months. However, I reduce that by one month to reflect the Respondent's admission and apology to the Court today. I also take into account the two days that he has been in custody (by which I would have reduced the sentence of four months in any event). I, therefore, sentence the Respondent to three months imprisonment. Six weeks of the sentence will reflect the past breaches of the Order which the Respondent has committed and six weeks of the sentence will be intended to secure future compliance with the Order.

(k) Suspension

16. In my judgment, a suspension of the sentence is not justified in the present case and would not serve a legitimate purpose. The Respondent has not engaged with the process at all until today and I am not satisfied that a suspension of the sentence has any real prospect of securing his compliance with the Order. I anticipate that there is a serious risk that it will only prompt an application at a later stage to lift the suspension on the basis that the Respondent has continued to ignore it. In my judgment an immediate custodial sentence is the only thing which will secure his compliance.

(l) Execution

17. On the other hand, I recognise that the Respondent will be unable to engage with the process or to carry out his duties as executor if he is in prison and for the benefit of the Applicants, therefore, I am prepared to give the Respondent one last chance to comply with the Order. I will, therefore, suspend execution of the Order for Committal under CPR Part 81.9(2) until Monday 10 October 2022 and direct that the Respondent's term of imprisonment shall commence on that date. I will also direct that the Committal Application will be listed for further hearing on Friday 7 October at 10.30 am and if the

Respondent has not complied with the Order by 4 pm on Thursday 6 October 2022, I will issue a warrant for his committal. If he refuses to attend on that occasion, I will attach a power of arrest the Order for Committal.

18. The Respondent will be entitled to unconditional release after serving half the sentence under section 258 of the Criminal Justice Act 2003. This means that he will serve six weeks of the sentence from 10 October 2022 (unless I vary or discharge it). I also remind the Respondent that he has the right to legal aid and to appeal to the Court of Appeal without permission.