Neutral Citation Number: [2022] EWHC 3158 (KB)

Case No: QA-2021-000057

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/12/2022

Before :

Mrs Justice Lambert DBE

- -

Between :

TREVOR BONE	**Appellant**
- and -	
SIMON WILLIAMSON	**Respondent**

- -
- -

Daniel Kessler (instructed by **the Law Office of Sarah Hougie Solicitors**) for the **Appellant**
Raghav Trivedi (instructed by **Bevan Britton**) for the **Respondent**

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JUDGMENT

Mrs Justice Lambert DBE:

1. This is an appeal from the order of Master Sullivan of 10 February 2021 requiring the appellant (Mr Bone, a debtor) to pay the costs of the respondent (Mr Williamson, a High Court Enforcement Officer) in Mr Bone's application under paragraph 16 of the Taking Control of Goods (Fees) Regulations 2014 (the "TCG (Fees) Regulations"). The appeal, which proceeds with the permission of Kerr J, raises the question of whether a High Court Enforcement Officer ("an HCEO") as opposed to an enforcement agent is an appropriate defendant to a dispute over fees levied by an enforcement agent.

Background

2. The application before Master Sullivan on 10 February 2021 had a protracted history. Given the narrow scope of the issue which falls for my determination, I deal with that background relatively succinctly.

3. On 8 August 2019, the two claimants in the underlying action against Mr Bone obtained a judgment against him in the sum of £24,000. On 17 September 2019, the claimants obtained a Writ of Control from the Yeovil District Registry which was directed to Simon John Williamson, an Enforcement Officer authorised to enforce writs from the High Court. The endorsement on the Writ was to the effect that: "*You are now commanded to seize in execution the goods, chattels and other property of the defendant authorised by law and raise therefrom the sums detailed in the Schedule (together with fees and charges to which you are entitled) and immediately after execution to pay the claimant … the said sums and interest.*"

4. An enforcement agent, Mr Gary Brown, of Direct Collection Bailiffs Limited ("DCBL") was engaged by Mr Williamson to enforce the Writ by taking control of Mr Bone's goods. Mr Brown attended Mr Bone's home on 3 October 2019. The total fees claimed in respect of this visit was £5,703.60. That sum, described on the statement of fees as "Direct Collection Bailiffs Ltd Fees Subtotal" was to be paid to DCBL. The solicitors then instructed by Mr Bone challenged those fees in correspondence with DCBL.

5. Mr Bone applied for, and was granted, a stay of execution of enforcement. Master Davison's order of 19 December 2019 required Mr Bone to discharge the debt at a rate of £200 per month. Notwithstanding the order, Mr Gary Brown and others attended Mr Bone's home on 10 January 2020. Upon being informed of the existence of Master Davison's order, they left but not, as it was put by Mr Bone, "*before they had wandered around my shed and fingered my goods*."

6. On 18 September 2020 Mr Bone issued an application pursuant to regulation 16 of the TCG (Fees) Regulations 2014 and CPR Part 84.16. The defendant was Simon Williamson, the HCEO. The application sought a stay on enforcement of fees and a detailed assessment of the fees levied in connection with the execution of the Writ on the basis that the fees were "inaccurate," that is, not consistent with the scheme set out in Schedule 12 of the Tribunal Courts and Enforcement Act 2007 and the TCG (Fees) Regulations 2014. The application also sought damages and costs for the breach of the stay of execution order by Mr Brown. Mr Bone's witness statement, insofar as is relevant to the fees dispute, refers only to the failure to give credit for £500 which had been paid and that VAT had been charged in error. The application did not set out why

Mr Williamson, the HCEO, as opposed to either Mr Brown, the enforcement agent, or DCBL was the named defendant.

7. Mr Williamson's consistent position in respect of the fees assessment has been that he was not the correct defendant. In correspondence with Mr Bone which followed the application he asserted that the HCEO neither recovers fees from a debtor nor has any entitlement to receive them and that the proper defendant to the application was Mr Brown and/or DCBL. Following a directions hearing on 4 November 2020, Mr Bone added Mr Gary Brown and DCBL as defendants. The application against Mr Williamson was not discontinued or determined however and he remained a defendant to the application. In correspondence, Mr Williamson's solicitors continued to try to persuade Mr Bone that the HCEO was the wrong defendant. Various offers were made including a "drop hands" offer but without effect.

8. On 6 January 2021, Mr Brown agreed to waive his fees. He explained that it would not be economical for him to continue to oppose the application given the small value of the fees involved and the likelihood of, at least some, irrecoverable costs. Since that date therefore has been no issue between Mr Bone and any of the defendants concerning the fees incurred in the execution of the warrant of control. The difficulty for Mr Bone however was that, by that date, Mr Williamson had run up a significant bill of costs.

9. Mr Bone's claim for damages for Mr Brown's breach of the order of Master Davison was pursued to the hearing on 10 February 2021. Both Mr Williamson and Mr Brown remained defendants in that application, Mr Williamson on the basis that he was vicariously liable for the acts and omissions of Mr Brown. The defendants were separately represented. The application was dismissed on its facts by Master Sullivan. She did not determine the issue of vicarious liability. So far as costs were concerned, the only issue between Mr Bone and Mr Brown/DCBL was the costs of the hearing, all other costs associated with the fees assessment having been subsumed in the compromise reached in December 2020. She awarded Mr Brown/DCBL their costs of the hearing on the basis that the application had failed.

10. She awarded Mr Williamson his costs of the failed application for damages for breach of the order. Additionally, she awarded him his entire costs of the application dealing with the assessment of fees on the basis of her finding that Mr Williamson, as an HCEO, was not the appropriate person against whom to pursue this dispute. She gave brief reasons. She noted the wording of regulation 4 of the TCG (Fees) Regulations 2014 which referred to the fees of an enforcement agent (rather than an enforcement officer); she found the enforcement agent to be a distinct entity to the HCEO; she said that, viewing the regulations as a whole, the fees claimed and disputed were those of the enforcement agent and not the HCEO. She assessed Mr Williamson's fees in total in the sum of £15,000 taking into account some indemnity costs since November 2020 when Mr Williamson's solicitors had made a "drop hands" offer. In her ruling dealing with permission to appeal she recorded that she was satisfied that notice of enforcement had been given, that having been a matter which she had decided on the papers.

11. By his notice of 3 March 2021, Mr Bone appeals this order on two grounds: that the Master was wrong to find that Mr Williamson was not a correct defendant to the fees assessment; and/or that she was wrong to find that the Notice of Enforcement had been validly served. I deal with the secondary ground of appeal later in this judgment as a discrete issue. As to the first ground, putting it shortly, it is asserted that an enforcement

agent acts under the authority of the HCEO when levying fees. This much, it is submitted, is apparent from the regulations. The enforcement agent is therefore agent to the HCEO and the HCEO therefore the correct defendant. If the debtor so chooses, he or she can add the enforcement agent as a further party but, it is submitted, there is no procedural or statutory requirement to do so.

12. The appellant was represented by Mr Kessler and the respondent by Mr Trivedi. I am grateful to them both for their succinct and focussed submissions.

13. Before dealing with the substance of the appeal, I set out the relevant framework.

Statutory Framework

High Court Enforcement Officers Regulations 2004

14. These prescribe conditions for authorisation of an individual as an Enforcement Officer. The regulations require that the HCEO must have no criminal convictions nor be a bankrupt etc. The regulations require that, once authorised, the HCEO must hold relevant insurance policies and a bank account through which monies recovered on behalf of judgment debtors are to be collected and paid. There is a process by which the authorisation of an individual as an HCEO can be terminated. Schedule 3 of the Regulations sets out the fees which the HCEO may charge.

Tribunals Courts and Enforcement Act 2007

15. Section 63 provides that, in respect of Enforcement Agents:

> *(1) ……*
>
> *(2) An individual may act as an enforcement agent only if one of these applies:*
>
> > *(a) he acts under a certificate under section 64;*
> >
> > *(b) he is exempt;*
> >
> > *(c) he acts in the presence and under the direction of a person to whom paragraph (a) or (b) applies.*
>
> *(3) An individual is exempt if he acts in the course of his duty as one of these –*
>
> > *(a) a constable*
> >
> > *(b) an officer of Revenue* and Customs;
> >
> > …
> >
> > (*d) a person appointed under section 2(1) of the Courts Act 2003 (court officers and staff).*

16. Section 64 of the Tribunals, Courts and Enforcement Act 2007 provides that a certificate may be issued by a judge of the county court.

Tribunals Courts and Enforcement Act 2007: Schedule 12

17. Schedule 12 ("Schedule 12") sets out the procedure for taking control of goods.

18. So far as is relevant, Schedule 12 provides at paragraph 2 that:

    i) "enforcement agent" means an individual authorised by section 63(2) to act an enforcement agent;

    ii) only an enforcement agent may take control of goods and sell them under an enforcement power;

    iii) an enforcement agent, if not the person on whom an enforcement power is conferred, may act under the power only if authorised by that person;

19. As to the collection of fees, paragraph 62 provides that: regulations may make provision for the recovery by any person from the debtor of amounts in respect of costs of enforcement-related services; those regulations may provide for recovery to be out of proceeds or otherwise; the amount recoverable under the regulations in any case is to be determined by or under the regulations; and that those regulations may provide for the amount if disputed to be assessed in accordance with rules of court. In this context "enforcement-related services" means anything done under or in connection with an enforcement power or in connection with obtaining an enforcement power or any services used for the purposes of a provision of Schedule 12 or regulations under it.

Taking Control of Goods (Fees) Regulations 2014

20. The regulations referred to in section 62 are the TCG (Fees) Regulations 2014.

21. Paragraph 4 provides in respect of "*Recovery of fees for enforcement-related services from the debtor*"

(1) The enforcement agent may recover from the debtor the fees indicated in the Schedule in accordance with this regulation and regulations 11, 12, 13, 15 and 17 by reference to the stage, or stages, of enforcement for which enforcement-related services have been supplied.

(2) The fees referred to in paragraph (1) may be recovered out of proceeds.

(3) The enforcement agent may recover under this regulation the whole fee provided in the Schedule for a stage where the amount outstanding is paid after the commencement but before the completion of that stage

(4) ..

(5) ..

22. In connection with disputes about the amount of fees and disbursements recoverable under the regulations, paragraph 16 provides that: "*Upon application in accordance with the rules of court, any dispute regarding the amount recoverable under these Regulations is to be determined by the court*." Such applications are made under CPR 84.16 which provides that where "a party" wishes the court to assess the amounts recoverable under regulation 16, that party may make an application to the court to assess the amounts.

First Ground of Appeal

23. The appellant's submits that the Master was wrong to find as she did that the HCEO was not an appropriate defendant. In careful oral submissions, Mr Kessler made the following observations.

i) He accepts that only an enforcement agent can recover and sell goods. As Senior Master Fontaine expressed it in *Just Digital Marketplace v High Court Enforcement Officers Association and Ors* [2021] EWHC 15 at [29]: "*legally the HCEO (unless he or she is also a certificated enforcement agent) must make sue of a certificated enforcement agent to actually carry out the enforcement steps (s.63 TCEA 2007). Those agents are specialists in the process of enforcement steps "on the ground" acting on instruction from the HCEO.*"

ii) However, the enforcement agent may only carry out those enforcement steps upon the authority of the HCEO, see Schedule 12, paragraph 2(2). Mr Kessler submits that not only are the debtor's possessions retained but also the fees are recovered under that authority. It therefore follows that if the enforcement agent is acting under the authority of the HCEO when levying fees, then a judgment debtor must be entitled to dispute those fees with the HCEO, the enforcement agent's principal.

iii) There are a number of practical and sensible reasons why the HCEO should be a defendant in a fees dispute. Enforcement agents "come and go" as Mr Kessler put it. There is a much lower bar to entry into bailiff work than entry into the work of an enforcement officer. Enforcement officers must undergo training. The professional standards imposed upon them are predictably high given that they are officers of the court. Given therefore that debtors are often vulnerable and without access to legal advice, there is good sense in the HCEO being overall responsible for the recovery not just of goods but also fees.

24. I do not set out the defendant's submissions in response as they are incorporated into the reasoning below.

25. I accept the submission (of both parties) that the HCEO and enforcement agent are distinct entities. The power to enforce the debt vests in the HCEO but, unless he or she has "dual qualification," the HCEO must instruct/authorise an enforcement agent to carry out the enforcement steps by taking control of the good and selling them under the enforcement power.

26. The TCG (Fees) Regulations 2014 were made under the powers conferred by paragraph 62 Schedule 12 of TCEA 2007. Those regulations refer throughout to the enforcement agent, as opposed to the enforcement officer, as the person entitled to recover fees for enforcement related services from the debtor. The enforcement agent is defined as "*an*

individual entitled to act as an enforcement agent by virtue of section 63(2) of TCEA 2007" (that is, someone who has been certificated or who is exempt). The definition does not cover the HCEO. Further, paragraph 16 of the TCG (Fees) Regulations 2014 states that any dispute regarding the amount recoverable "under these Regulations" is to be determined by the court (my emphasis). The regulations provide a self-contained scheme for the charging of fees, the levels of fees and mechanism for dealing with disputes as to those fees. It seems to me therefore that on an application under paragraph 16 (and CPR 84.16) the enforcement agent is the correct respondent and not the HCEO.

27. Mr Kessler floats the submission that by enforcing the writ and by charging the fees referred to, the enforcement agent is acting as an agent for a principal, the enforcement officer. The proposition remained largely undeveloped both in written and oral submissions. But there is a fundamental difficulty with this argument. For the reasons set out above, when the enforcement agent takes the practical steps to enforce the writ and then charging the fees for doing so, he or she is performing a function which the enforcement officer could not perform under the regulations. In these circumstances, I find it difficult to see how Mr Brown in this instance could have been acting as agent for Mr Williamson. Further, the fees charged by Mr Brown are for work undertaken by him personally in enforcing the writ. The bill for those fees is sent by him (or his employer DCBL) to Mr Bone. There is no evidence that Mr Williamson, as enforcement officer, is entitled to receive any share of those fees. Indeed the evidence before the Master was to the contrary: Mr Williamson's statement referred to him not having any right to any part of the fees incurred by Mr Brown. Even if, in some respects therefore, there exists a relationship of principal and agent between the enforcement officer and enforcement agent, the fees claimed by Mr Brown were in respect of work undertaken personally by him.

28. Mr Kessler submits that Schedule 12, paragraph 66 assists his argument. This paragraph sets out that, where an enforcement agent breaches a provision of the Schedule, then the court may order the enforcement agent or a related party to pay damages. A related party includes "the person on whom the enforcement power is conferred" that is, an enforcement officer. This provision makes sense as one imposing upon the enforcement officer a potential liability for any acts or omissions by the enforcement agent which constitute a breach of Schedule 12. It is consistent with the requirement that the HCEO should carry insurance cover including professional indemnity insurance and public liability insurance. However, submitting a bill for fees which is incorrect is not a breach of Schedule 12 nor a breach which would render the enforcement agent or officer liable to pay damages. I do not therefore conclude that it is a provision which advances the appellant's case.

29. I therefore dismiss this ground of appeal. I find nothing wrong with the Master's conclusion. It is a conclusion with which I agree.

Second Ground of Appeal

30. I turn therefore to the appellant's further ground of appeal by which he asserts that the Master was wrong to find as a fact that the Notice of Enforcement had been served. It is not clear whether Kerr J granted permission in respect of this ground as he did not differentiate or comment upon either of the two grounds of appeal. In any event, I find that I can deal with the matter quite shortly.

31. The appellant claims that he did not receive the Notice of Enforcement and that when Mr Brown and his colleagues arrived at his home on 3 October 2019 it came as a complete shock and surprise to him. He submits on appeal that the Master was wrong to find as she did that the notice had ever been sent, or at least sent to the correct address and that in doing so she reversed the burden of proof.

32. Dealing with the framework shortly, paragraph 7 of Schedule 12 requires that an enforcement agent may not take control of goods unless the debtor has been given notice. Regulation 8 of the Taking Control of Goods Regulations 2013 prescribes a number of ways in which notice can be given, including by post to the debtor. Section 7 of the Interpretation Act 1978 provides that where an Act authorises or requires any document to be served by post then service is deemed to be effected by "*properly addressing, pre-paying and posting a letter containing the document and unless the contrary is proved service is deemed to be effected at the time at which the letter would be delivered in the ordinary course of the post."*

33. It is not clear quite how the issue arose before the Master. The point was not part of the application before her and was not addressed in her substantive judgment. It features in her response to the application for permission to appeal. It appears that the argument was deployed only during the costs argument to buttress Mr Bone's case that the HCEO was an appropriate defendant to the application. In any event, there is no merit in this ground and I see no error by the Master in her approach.

34. No oral evidence by either side was given, the parties apparently being content that the matter should be dealt with on the papers. The witness statement of Mr Williamson deposed to the fact that the Notice of Enforcement had been generated and posted. There was a postage report recording Mr Bone's name and postcode and the hearing bundle included a document recording that mailbags on the relevant date were collected by Royal Mail. Mr Bone asserted in his witness statement that he had not received the notice at his home address. However, by reason of his financial difficulties, Mr Bone was not living at home but in a garden shed at the home of his ex-mother in law. There was no evidence before the Master from someone living in his home or from his ex-mother in law that no notice had been received.

35. I am quite satisfied that the Master was entitled on the material before her to conclude that there was sufficient evidence that a notice had been generated and posted to the appellant. The fact that he denied having received it was likely due to his temporary residence in the garden shed.

36. I find no error of law here. There was no mis-application of the burden of proof. The finding of fact was one which the Master was entitled to make and I dismiss this ground of appeal also.

37. This appeal is therefore dismissed. In the circumstances there is no need for me to consider the short additional points raised by the respondent in his notice. I invite the parties to draw up the appropriate order.