Case No: G00WD581

IN THE COUNTY COURT
AT LUTON

Luton Justice Centre, 4th Floor,
Arndale House, The Mall, Luton, LU1 2EN

Date: Thursday 2nd December 2021
Start Time: **10.29** Finish Time: **10.51**

Page Count: 6
Word Count: 3,368
Number of Folios: 47

Before:

HER HONOUR JUDGE BLOOM

- - - - - - - - - - - - - - - - - - - -

Between:

TOMAS CONLON	**Claimant**
- and -	
RINGWAY INFRASTRUCTURE SERVICES LTD	**Defendant**

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

The Claimant was not present or represented
ANTHONY SENDALL (instructed by **GBH Law Ltd**) for the **Defendant**

- - - - - - - - - - - - - - - - - - - -

Approved Judgment

.....

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

HER HONOUR JUDGE BLOOM:

1. Mr Conlon has chosen not to attend today, and I use the word "chosen" for reasons that I think I have already made clear. I am quite satisfied that he was notified of this hearing on 22nd October, but in any event he was also given the opportunity to attend remotely even though it is an attended hearing. He has done neither. In those circumstances, the court has proceeded.

2. The background to this case is that Mr Conlon issued a claim in September 2020 seeking damages in respect of his employment with the defendant which, as I understand it, terminated in 2015. When he issued the proceedings on 28th September 2020 he used the address of Flat 8, Curzon Gate, Grandfield Avenue, Watford, Herts, WD17 4DZ, but at the same time he put an asterisk at the top of the claim form saying all communication was to be via email to him at james.level@hotmail.co.uk.

3. The defendants filed a defence, but on 12th January of this year they made the application that is before me to strike out or stay the claim as the address provided was not his residential address and hence he was in breach of CPR 6.23. CPR 6.23 says this: "A party to proceedings must give an address at which that party may be served with documents relating to those proceedings. The address must include a full postcode unless the court orders otherwise".

4. It was listed initially before Deputy District Judge Duncan on 23rd June and directions were made to file statements by 28th July, together with documents, and the court made clear that they expected to see evidence that the claimant had a tenancy agreement and evidence regarding the eviction and also utility bills and bank statements. Mr Conlon applied to set aside that order but his application was dismissed on 15th July 2021. Statements have been received from Mr Ventner for the defendant. He works for the company that manages the property at 8 Curzon Gate, which I will call "the property" from now on. He has done a detailed statement and attached documents to it. Without going through it in a great deal of detail, what is clear is that the defendant was evicted from this property. There was first of all an eviction notice dated 19th September 2019. He applied for permission to appeal that and it was refused by His Honour Judge Middleton-Roy on 27th September 2019. I note that was a year before he issued these proceedings. There was then a report about the eviction and a note dated 3rd October and, in fact, it actually took place on 30th September and there was then an email in fact from Mr Conlon to a Daniel Tupper(?) in which he said he was now homeless, and that was on 11th October.

5. More importantly perhaps, having been evicted on 30th September 2019, Elliotts, who were the Managing Agents at the time, took a holding deposit from a new tenant and the new tenant signed a tenancy agreement and has moved in to the property. The tenancy agreement has been redacted but is attached and there is only one tenant there and Mr Ventner confirmed to me that tenant does not have anyone else living with her. Mr Ventner spoke to the tenant yesterday, and that tenant informed him, Mr Ventner, that she has never met Mr Conlon, she does not know Mr Conlon and she has never allowed him to live at the property. She is still receiving post for him and the police have been looking for him, but she is quite clear in the information she gave to Mr Ventner that he does not live there and she does not know him. That evidence of course is unchallenged because Mr Conlon has not attended.

6. That statement was received from Mr Ventner. There was also a statement from Mr Cameron Blackie when he made the application which attached to it a PI report. He had sent a private investigator to the property who, in effect, gave evidence which is very similar to what Mr Ventner has now told me personally in court, which is that there was someone else living there, a lady, who did not know Mr Conlon. There is no contradiction and, although I have not got direct evidence from the PI, it is corroborative of what Mr Ventner has told me and the documents support what Mr Ventner says. Those were the statements that I received.

7. There was no statement filed by Mr Conlon. There are emails from Mr Conlon. On 19th June, which was prior to the hearing in front of the Deputy District Judge, he referred to his occupation and asserted that people were mistaken, it was difficult to find this flat and that he had contested the eviction and it is "now partly resolved". He was ordered, as I say, to produce evidence of his occupation, i.e. a tenancy agreement, utility bills, bank statements showing his rent. None of that has been received. Rather, he sent an email on 28th July saying he could not provide the information requested as he was no longer a lead tenant but a subtenant. Again, there was no statement and no documentation and nothing from a lead tenant to confirm his sub-tenancy. He did send an email on 27th September, but again he asserted that he was the tenant, and this is the most recent email he sent about it, he said: "For the court and for the record, my residence is Flat 8, Curzon Gate Court, Watford. They sent a private investigator who went to the wrong address." Of course, none of that is in evidence because there is no witness statement and Mr Conlon has not attended today. As I say, the notice was sent by email to the parties. Yesterday Mr Conlon said that he had not got the notice of hearing and he was out of the country. He has been sent a link, as I say, but he has not chosen to attend.

8. The position that I am in today is I have had evidence on oath from Mr Ventner and Mr Cameron Blackie. That is, of course, unchallenged evidence. It also is supported by documentation which in my view shows categorically that Mr Conlon was evicted from this property in 2019 and has not been readmitted and that a year before he commenced these proceedings he had been evicted and he has deliberately put an address in the proceedings which he knows is not his residential address. He is therefore plainly in breach of 6.23. He has continued with his assertion that it is his address, despite the evidence from Mr Ventner and Mr Cameron Blackie and the private investigator. He, of course, could have chosen to accept that he no longer lived there and provided an address to this court. He has had since 12th January, when the application was made, to rectify the position. He has chosen (a) not to do so, and (b) to continue to assert to the court that it is his address as recently as September 2021.

9. It is an application, but it is an application where I have heard evidence, and I am satisfied that the defendant has established on the balance of probability that Mr Conlon does not live there and has not lived there since September 2019 and that he is misleading this court when he asserts that is his current address and that he has provided this court with a false address for service and continues to fail to comply with CPR 6.23 and therefore continues to fail to provide an address for service. I should add that documents that have been sent to that address have been returned marked "not known at this address" at the address given, which does support the defendant's position, which is that he does not live there, and that includes the bundle

for this application which was returned on 5th October, delivery having been refused by the tenant at the property because it was not addressed to her.

10. Mr Sendall has provided me with a skeleton argument and refers me to the recent case of *Smith v Marston Holdings* [2020] EW Misc 23. That was a case where an accommodation address had been given. It was to do with an application for pre-action disclosure, and I was referred to paragraphs 25 to 27, and particularly in respect of paragraph 27 it was said that: "This is yet further unacceptable behaviour by the applicant … the consequence was that the court might strike out the proceedings. There is of course a power in CPR rule 3.4 to strike out a statement of case where there has been a failure to comply with a rule: see 3.4(2)(c). But an application notice is not a statement of a case: see the definition in CPR rule 2.3(1)." Of course, it went on to say the court does have powers under Rule 3.1, including the power to stay the whole or part of the proceedings, and that might be a suitable sanction until a compliant address was provided.

11. The point was made in Mr Sendall's skeleton argument that there were a number of reasons why this court should consider striking out. There was litigation that had now spanned five years, and I was referred to multiple different judgments, several from Mrs Justice Elizabeth Lang, now Lady Justice Lang in the Employment Appeal Tribunal, another judgment from the Watford Employment Tribunal. It was pointed out that this is not an application but this is the claim form and it is not providing something like an accommodation address but deliberately providing a false address, and it was stressed that it is important to have a residential address not least because the court and the parties need an address to serve documents and orders on, but also because it means the other party cannot get security for costs and in the event that costs orders are made it is very difficult to locate the paying party. The defendants make the point they have already got a costs order in their favour and the costs of the hearing on 23rd June have been reserved and, of course, at present the defendant has no information as to where the claimant is to be found in order to effect these costs orders. What the defendants ask is that, given he has deliberately misled the court, that this is a case where the claim should be struck out or at least stayed pending compliance. What is said is that what should be happening in this case is a strike out. It is pointed out that if it is struck out Mr Conlon will be barred under the Limitation Act from bringing a fresh claim.

12. I have considered this matter very carefully. It is a mandatory requirement to provide an address for service. I have absolutely no hesitation in concluding, looking at the history of this claim and the behaviour of Mr Conlon and having heard the evidence and seen the documentation, that Mr Conlon has deliberately misled this court and provided an address which is not his residential address, or indeed an address at which the party can be served, and must give an address at which that party may be served. The address that he has given is not an address at which he may be served, it is someone else's address, it is the new tenant's address; she is receiving these documents and returning them, because he does not live there, he is not the sub-tenant, he is not the tenant and he never lived there as her subtenant and that is why he is asking for email service. This court does not take kindly to people who deliberately mislead this court. He has had the opportunity since January to correct the situation. He has chosen not to do that. He has continued to maintain it is his address, despite the evidence to the contrary.

13. It seems to me that staying these proceedings would not be in accordance with the overriding objective. There is no evidence that he is going to comply. As I say, he has had the opportunity to do so. The concern the court has with somebody who is deliberately lying to this court is that if we stay, another address will be provided which may also turn out to be one with which he has no connection or at which he cannot be served. He has chosen not to comply not just with the requirement of 6.23 but the court order that was made by Deputy District Judge Duncan requiring him to file a statement by 28th July, together with documentation. He has not done that and he has not attended this hearing, so that is further breaches of the court orders that have been made by this court.

14. With that in mind, I have given a very lengthy history of this matter and noting that it is as long ago as 2015 that Mr Conlon was employed by the defendants, the court says, as Mr Sendall has said, it is very important to have an address for service. Firstly one can see today that without an address for service it enables a party to assert that they have not received documents and to avoid the court orders and court requirements and to prevaricate in a way that is not conducive to the overriding objective. It also, as is rightly pointed out, means that if that party is the losing party or costs orders are made against them it becomes extremely difficult to enforce court orders and the court has made it a mandatory requirement that there must be somewhere where documents can be served and Mr Conlon has chosen not to comply with that order.

15. The overriding objective requires that when I am considering what to do I should look at what would be just and how to deal with it at a proportionate cost. I have to ensure that parties are on an equal footing and can participate fully in proceedings. In my view then, there is a lack of equality of arms where one party is complying with the rules and providing their address and the other party is simply refusing to do so. As I say, as we can see from today's hearing, it leads to difficulties with each and every hearing whereby the court is being asked to adopt a special procedure for this litigant where he is served by email. That is not acceptable. It does not save expense, because again, as happened here, documents are sent to that address and returned "not known" ; the bundle is prepared, it is sent to that address, not taken by the tenant because Mr Conlon does not live there; that causes extra expense to the defendants.

16. The court has to deal with it in a way that is proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party. I of course accept that this is probably very important to Mr Conlon that he gets a resolution of his claim in which he is seeking I believe nearly £12,000. However, as against that, the reality is that it is a very old claim; had he wished to pursue it properly I would have expected him to provide an address at which he could be served.

17. This case has to be dealt with expeditiously and fairly. The reality is it cannot be dealt with expeditiously and fairly where one party is misleading the court and not available to be served with documents at an address in the United Kingdom or elsewhere but no other address has been given.

18. The court has allotted court resources to this application, it was listed in the summer as being an application to set aside which has been heard and the court has listed it for

a day today. Mr Conlon has chosen not to attend. That is quite a lot of court resources. There are other cases that require the court's attention.

19. Finally, and perhaps most important, the court has to ensure compliance with rules, practice directions and orders. As I have already mentioned, Mr Conlon has breached the court order that Deputy District Judge Duncan made because he has not provided any statement at all in support of his position for today's hearing and he has not attended as required, whether physically or remotely. As far as compliance with rules is concerned, he has not complied with 6.23. Not only has he not complied with it but he has maintained a position which is plainly wrong and the court has no confidence whatsoever, were it to stay these proceedings, that Mr Conlon would comply and provide an address, and nor does the court think it is proportionate or fair for the defendants that this case continues in abeyance, in effect, stayed for a claimant who has deliberately misled the court. The court does know and understands that the consequences of striking it out will be that the limitation period applies, but Mr Conlon has brought this upon himself by lying to the court and failing to correct the position when it became clear that he was not living at Flat 8 Curzon Gate, Grandfield Avenue, Watford and therefore the court takes the view that the correct and proper step to take is to strike out under CPR 3.4(2)(c) on the basis that it appears to the court there has been a failure to comply with a rule, practice direction or court order. And in this instance, where it is maintained before the court today and there is no apology, no acceptance of fault and no indication that were the court to stay it that Mr Conlon would comply. In these circumstances, the court considers that, given this case is now extremely stale anyway, that the case should be struck out and therefore the court strikes out the claim.

This Judgment has been approved by the Judge.