

IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM SHOREDITCH COUNTY COURT
HIS HONOUR JUDGE GRAHAM QC

CCRTF 96/0436/C

Royal Courts of Justice
Strand
London WC2

Friday 18th October 1996

B e f o r e:

LORD JUSTICE WAITE
LORD JUSTICE SAVILLE
LORD JUSTICE OTTON

THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF HACKNEY

Ex parte
Appellant

- v -

MAUREEN MULLEN

(Handed down Transcript of
Smith Bernal Reporting Limited, 180 Fleet Street,
London EC4A 2HD
Tel: 0171 831 3183
Official Shorthand Writers to the Court)

MR RANJIT BHOSE (instructed by the Solicitor of the London Borough of Hackney) appeared on behalf of the Appellant (Plaintiff).

JUDGMENT OF THE COURT
(As approved by the court)

LORD JUSTICE OTTON: This is an appeal by the London Borough of Hackney ("LBH") from the order of HHJ Graham QC on 4 March 1996 at Shoreditch County Court whereby he ordered LBH to pay a fine of £5,000 in respect of a breach of an undertaking given to the court.

The undertaking was given on 24 July 1994 on behalf of the appellants to HHJ Horder at the Central London County Court to carry out specified works of repair to a property at Dynevor Road, London 16, such works to be commenced on or before 1 December 1994 and to conclude before 31 March 1995. Those works were not carried out or even started within the specified dates and had still not been commenced in March 1996 when the matter came before Judge Graham.

The case arose from a claim by the plaintiff, a secure tenant, for compensation for breach of a repairing covenant and for a mandatory order to carry out remedial work. At the first hearing before Judge Horder a consent order was made which contained the undertaking. The estimate for the cost of carrying out the repairs proved to be substantial. The council was keen to avoid this expenditure particularly as special permission had to be obtained before works of such magnitude could be carried out. The council sought an alternative solution by offering permanent accommodation to the plaintiff. The plaintiff was in principle prepared to accept such accommodation provided it was suitable. She had a family of six children and needed at least a four-bedroom property which she stipulated should be in the Stoke Newington area. Offers were made which she rejected on the basis that if she were to become a housing association tenant she would not have the same advantages as a council tenant in that she would be deprived of the right to purchase and the rights of succession would be more limited. Thus she decided to remain in the house at Dynevor Road, accept compensation, and as no work had been carried out she sought to enforce the undertaking.

By County Court Rules Order 29, rule 1(6):

"Where a person required by a judgment or order to do an act refuses or neglects to do it within the time fixed by the judgment or order or any subsequent order... the judgment or order may be enforced, by order of the judge, by a committal order against the person, or if that person is a body corporate, against any director or other officer of the body."

Subject to modifications (not relevant to this appeal) rule 1 applies to undertakings also (r.1A). By virtue of section 14(4A) Contempt of Court Act 1981 there is no limit on the fine that may be imposed by a county court. There was and is no dispute that LBH were under an obligation to commence the work on 1 December 1994 and that such work should have been completed by the end of March 1995 and that accordingly the defendants were in breach of their undertaking.

When considering the appropriate penalty, the learned judge said:

"If this was merely an exceptional case I would have no difficulty in overlooking such a lapse. However, it is one of numerous examples of the failure on the part of Hackney to take with sufficient seriousness promises which are made to the Court. Time and again in repairing cases undertakings are given to the Court which are not honoured and as a result applications are made to commit. On all previous occasions, bearing in mind the extreme difficulty which the Housing Department faces in the Borough the failure of compliance has not been penalised... The time has now arrived when Hackney Council must be reminded of the seriousness of promises made to the Court."

The judge accordingly imposed a fine of £5,000.

In the grounds of appeal LBH aver that the learned judge erred in law in taking into consideration other instances unconnected with the present case when it was said that the defendants had failed to honour undertakings given to the court. Mr Ranjit Bhowse submitted that there was no evidence before the court, nor was there any schedule (agreed or otherwise) of any previous proven breaches of undertakings given by, or injunctions ordered against, the defendant in other cases. It was wrong in law and principle for the court when exercising its disciplinary functions, to take into account any proven past contempts of court other than those which have occurred in the instant proceedings; alternatively, "any proven past contempts in other proceedings which are not before the sentencing Court, and upon which the contemner's legal advisors can take specific instructions so as to be able properly to mitigate".

Leave was given by this court for the Council to adduce affidavit evidence that to the best of the knowledge and information of its officers, LBH had been found to be in contempt of court on one occasion only in the 12-month period prior to 4 March 1996, when the learned judge had made no order, save for ordering the defendant to carry out further repairs and to pay the cost of the application. Thus, counsel submits, the "numerous examples" of breaches which the judge referred to do not reflect the true position and no penalty should have been imposed at all.

Discussion

The central question is whether the court, when considering the penalty, was entitled to take into consideration other previous breaches in other cases? In order to answer that question it is necessary to look at the nature and scope of judicial notice. It is well established that courts may take judicial notice of various matters when they are so notorious, or clearly established, or susceptible of demonstration by reference to a readily obtainable and authoritative source that evidence of their existence is unnecessary. (See Phipson on Evidence, 14th edition, chapter 2/06.)

Generally, matters directed by statute, or which have been so noticed by the well established practice or precedence of the court, must be recognised by the judges; but beyond this, they have a wide discretion and may notice much which they cannot be required to notice. The matters noticeable may include facts which are in issue or relevant to the issue; and the notice is in some cases conclusive and in others merely prima facie and rebuttable; (ibid 2/07).

Moreover, a judge may rely on his own local knowledge where he does so "properly and within reasonable limits". This judicial function appears to be acceptable where "the type of knowledge is of a quite general character and is not liable to be varied by specific individual characteristics of the individual case". This test allows a judge to use what might be called "special (or local) general

knowledge"; (ibid 2/09). County courts fall within the scope of the rule relating to courts which have been held to be local courts, and thus courts whose members are not merely permitted to use their local knowledge, but who are regarded as fulfilling a constitutional function if they do so; (ibid 2/09).

Conclusion

Applying these principles to the present case I am satisfied the judge was entitled to take judicial notice of his "special (or local) knowledge" of how LBH had conducted itself in relation to undertakings given to the court in similar cases.

His first task was to determine whether the matters (ie the conduct) were notorious or clearly established. By implication he decided that they were. Even if they could not be so categorised they were clearly "susceptible of demonstration by reference to a readily obtainable or authoritative source", namely, the court records of those occasions where LBH had given undertakings and had been brought back at the behest of an aggrieved plaintiff. It may be that on such occasions LBH had only once been found to be in contempt. That was only part of the picture. The judge would have known from his own experience (or from the records at Shoreditch and the Central London CC) of those occasions where breaches had been proved against or admitted by LBH and where the court had been asked by either or both parties not to give a ruling as a term of the settlement to the satisfaction of the plaintiff.

In my view, the matters were such that it was not incumbent upon the judge to grant an adjournment for LBH to rebut the notice. The judge had indicated what was in his mind and no such application was made. Even if it had been granted the affidavit now produced would not have met this point.

The matters did not fall into the category where he was obliged to take them into account. The

judge had a wide discretion which permitted him to take notice if he so elected. The facts noticeable were clearly relevant to the issue of what the appropriate sanction was. (For the avoidance of doubt I should add that it would not have been appropriate to take notice when determining whether LBH had been in breach of the undertakings. This was not in issue).

HHJ Martin Graham QC is an experienced judge: he was appointed to the bench in 1986 and sits regularly in Shoreditch County Court. Thus he did not err in exercising his discretion to take the matters into account. Once he had decided to take notice it was for him to determine what weight to attach to the knowledge. There is nothing in the manner in which he expressed himself which suggests that he relied on his local knowledge "improperly or beyond reasonable limits". Counsel realistically acknowledged that if it was permissible to take notice he could not maintain that the fine of £5,000 was manifestly excessive.

Accordingly I would dismiss the appeal

Order: Appeal dismissed; no order as to costs.