Case No: EN165/17

NCN: [2018] EWHC 2798 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday, 30 August 2018

BEFORE:

MASTER DAVISON

BETWEEN:

(1) ROOFTOPS SOUTH WEST LIMITED
(2) JAMES REUBEN SLOCOMBE
(3) PAUL HOWELL
(4) MARCUS DAVIS

Claimants

- and -

(1) ASH INTERIORS (UK) LIMITED
(2) DIRECT COLLECTION BAILIFFS LIMITED
(3) CLAIRE LOUISE SANDBROOK

Defendants

MR SCOTT RALSTON (instructed by Contract Answers Solicitors) appeared on behalf of the Claimants
MS LAUREN SUDING (instructed by Star Legal) appeared on behalf of the First Defendant
MR JUSTIN SHALE (instructed by the in-house legal department of the Second Defendant) appeared on behalf of the Second and Third Defendants at the hearing on 26 July 2018
MR CHRIS ROYLE (instructed by Bevan Brittan LLP) provided written submissions and appeared on behalf of the Second and Third Defendants at the hearing on 30 August 2018

JUDGMENT
(As Approved)

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1. THE MASTER: This is my judgment on a claim which I heard on Thursday, 26 July 2018. My judgment is confined to the issue of liability which was all that there was time to deal with on that day. The claim is in respect of the enforcement of a County Court judgment. The judgment was for £1,557.93 and was dated 24 April 2017. The judgment creditor was Ash Interiors (UK) Limited of which Mr Ashley Williams is the proprietor. The judgment debtor was Rooftops South West Limited, of which Mr James Slocombe is the proprietor. The judgment debt being over £600, the judgment creditor had the right to enforce in the High Court. Direct Collection Bailiffs Limited ("DCBL"), a firm of certificated bailiffs, (now called Certificated Enforcement Agents), who were instructed by Mr Williams, obtained an order transferring the claim to the High Court for enforcement and, on 16 May 2017, a Writ of Control was issued in favour of Claire Sandbrook, a High Court enforcement officer.

2. The relationship between Ms Sandbrook and DCBL is not entirely clear, but it appears that she delegated her powers to DCBL and Mr Justin Shale of counsel, who appeared for DCBL and for her, accepted that she was vicariously liable for the acts and omissions of DCBL. When I refer to DCBL, unless the contrary appears, that expression is to be taken as including Ms Sandbrook.

3. Placed into a nutshell, it is alleged that DCBL exceeded their enforcement powers by unlawfully seizing first a van and then a powerboat. Proper procedures were, it is said, not followed in respect of either seizure and, in the case of the powerboat, it is said that the boat did not even belong to the judgment debtor. It is said that these wrongful acts were compounded by the presence of a TV crew from a company called Brinkworth Films Limited, filming for the series "Can't Pay? We'll take it away".

4. On behalf of the claimants, I heard evidence from Mr Slocombe and his wife, from the third claimant, Mr Paul Howell, who, with the fourth claimant, Mr Marcus Davis, claims to be a co-owner of the boat. I heard from Mr Harry Whitcomb, who was present when the van was seized, and I read a witness statement from Patricia Hurle, who worked on the reception desk of the boat park from which the boat was seized. For the second and third defendants I heard from Ms Yasmin Miah, who is an in-house solicitor in the employment of DCBL.

5. Remarkably, there was no evidence from the enforcement agents who carried out the seizures. These were Mr Gareth Short and Mr Mitchell Star. Nor was there any evidence from the manager directly in charge of these agents, who I understand to have been Mr Derek Wesson.

The facts

6. I will first set out the facts as they are agreed or as I find them to be. The fact-finding exercise begins with the notice of enforcement. DCBL use a software package called “Ethos” or “My Ethos”. As I understand it, this system generates the documents necessary to progress debt recovery and allows a record to be made of the steps taken, (though the complete record in this case has never been disclosed). On 17 May 2017, a Notice of Enforcement addressed to Rooftops at its business address at 97a Summerhill Road, St George, Bristol, was generated. Ms Miah's evidence was that it was sent by first-class post. But there is no documentary evidence at all to support that. Ms Miah did not personally post the notice. Although Ethos is capable of generating reports, no

report attesting to postage was produced. The evidence that it was posted was based on Ms Miah's understanding of how the system worked in normal practice.

7. The paucity of evidence was very surprising given that the giving of notice is, by paragraph 7 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, a prerequisite to taking control of goods and that paragraph stipulates that the enforcement agent must keep a record of the date and time when the notice is given.

8. Both Mr and Mrs Slocombe denied ever seeing this Notice of Enforcement and there are two reasons why I find that it was never sent. The first I have already alluded to. The means to demonstrate the sending of the Notice of Enforcement lay within DCBL's power and it was indeed absolutely incumbent upon them to prove this matter. But they failed to do so. I would add that their numerous further failings in the observance of proper and lawful procedures, which I will presently come to, do not inspire me with confidence that the Notice of Enforcement was sent. Second, the Slocombes scrupulously produced every document that they received from DCBL and their solicitor, Mr Jones, visited their business premises in order to satisfy himself that he had been given everything relevant. If I can say this without impertinence or disrespect, the Slocombes struck me as unsophisticated and artless people who would neither have suppressed the document nor seen any advantage to themselves in doing so. Given Mr Slocombe's somewhat unwise and unreasonable stance in relation to the judgment debt, it is perfectly possible that, if the Notice had arrived, he would have ignored it. But that does not demonstrate that it did arrive. On the balance of probabilities, I find that it did not arrive and that is because it was never sent.

9. I turn then to the events of 1 June 2017. That was the day that Messrs Short and Star first attempted to enforce the Writ of Control. As already noted, they did not give evidence but they, or one of them, compiled a visit report which was subsequently disclosed and stated as follows (page 74 of the bundle):

> "Gareth Short and Mitch Star attended 97a Summerhill Road at 0700 on 1/6/2017 which is a small unit attached to the side of a bakery in poor condition. No contact was made so a calling card was left in the attention of the debtor. We then contacted the debtor via telephone and he advised he was currently at Buildbase loading his van up. He claims he has not received any letters therefore refused to deal with us and that we should have given him an appointment. Case progressed to stage 2.
>
> We then attended Buildbase to find his sign written van parked on private property. We parked up and watched the van and waited for him to exit the store. He eventually left the store and we followed him to where he stopped and we then seized his van and took control of the keys. The keys held the key for the lock-up so we headed back there to see what was inside. Assets inside the lock-up were limited, with just old tools of value, low value (sic).
>
> Paperwork that we had found in the debtor's van included invoices for a speedboat he had bought through the company. We also found invoices for where the debtor was storing the boat which was in the BH postcode: see images in My Ethos. I have advised the office sends NOE to these address (sic) for us to enforce there in the near future. We placed the

> debtor into a CGA to pay in full in seven days. If no reply, we will attended further addresses once available. Images sent to My Ethos.
>
> Thanks Gareth."

10. This is, as I find, an accurate, if concise, note of the events of that day. It is only necessary to add the following further observations or findings:

(i) the language of the report elides Mr Slocombe and his company, which was of course the judgment debtor, or at the very least, glosses over the difference between them.

(ii) the report states unequivocally that the van was seized at a place away from the Buildbase store. It is therefore surprising that Ms Miah first maintained that the seizure was at Buildbase. The distinction is important because the actual location of the seizure was not only away from Buildbase but, in fact, on private property, namely the yard of one of Rooftops' customers, Mr Harry Whitcomb. Mr Slocombe had gone on there from Buildbase, where he had been picking up building supplies, in order to discuss a large roofing contract with Mr Whitcomb. The van was seized on land that belonged to Mr Whitcomb's landlord. It was not a highway.

(iii) The paperwork was found during a search by Messrs Short and Star of the van. This search was carried out in front of the film crew that were accompanying them that day and, like the seizure of the van, was filmed. The papers included two invoices of which photographs were taken. The photographs were in the bundle. Both were in respect of a Hydrolift powerboat. One was headed "Cobbs Quay" and was for "storage ashore package". This was addressed to Mr James Slocombe, Rooftops South West Limited at Rooftops' business address. The other was from Mitchell Power Systems and was addressed to James Slocombe, who was described as "the customer", and again the address was Rooftops South West's address.

(iv) The somewhat ambiguous expression "We placed the debtor into a CGA" (controlled goods agreement), meant no more than that Mr Short unilaterally filled out a controlled goods agreement which described the van and sundry power tools as the goods taken into control. But Mr Slocombe never signed the controlled goods agreement, and paragraph 22 of the Defence states as follows:

> "In relation to the CGA, it was simply an indication of the goods to be seized as it was unsigned."

It was therefore rather baffling that Ms Miah, in her witness statement of 10 October 2017, and also in oral evidence maintained that a controlled goods agreement had been signed and entered into. The controlled goods agreement was left at Rooftops' business premises at Summerhill Road, but did not prompt any further payment by Rooftops.

11. I turn to the events of 19 July 2017. As foreshadowed in the visit report, a Notice of Enforcement was sent to the boat park where the Hydrolift boat was being kept and was being repaired. In fact, two such notices were sent because the first one slightly mis-stated the postcode. The first was dated 15 June 2017, the second 4 July 2017. The second was addressed as follows: name: Rooftops South West Limited; address: Rockley Boat Park, Rockley Sands, Poole, Dorset BH15 4LZ. The boat park was not a place where Rooftops carried on a trade or business and nor could anyone at DCBL have

thought that it was. Therefore, the sending of a sending of a Notice of Enforcement to this address was ineffective.

12. On 19 July 2017, and again with a film crew in tow, Messrs Short and Star attended the boat park. Ms Hurle, who was on reception, thought that they were marine police. Whether because of that misapprehension or because of the presence of the film crew, (who were very unwelcome), or through ignorance of the law, the staff at the boat yard did not ask for an entry warrant or question DCBL's legal authority.

13. The boat, which was on a trailer, was removed that afternoon by a specialist boat removal company. This was done over the protests of Mr Slocombe and Mr Howell, the third claimant, both of whom rang the enforcement agents in order to make two points to them. The first point was that the boat belonged to the individual claimants and not to the first claimant, the judgment debtor. The second point was that the boat was undergoing repairs and not in a suitable condition to be transported. Essentially, these points were brushed off and, in the case of Mr Howell, the agents would give him little or no information or response anyway because, so they maintained, of data protection concerns. (I mention that I detected some tension between those expressed concerns and the presence of a TV crew.)

14. The seizure of the boat caused consternation and panic amongst the individual claimants. It is perfectly plain that they did in fact own the boat, which they had bought in the autumn of 2016 from a Mr Lee Oran for £9,000 as an asset which all three of their families could enjoy. But they did not have a receipt to prove purchase. Mr Howell went round to see Mr Oran and his wife on the evening of 19 July to obtain a receipt, albeit a year after the purchase. There was nothing sinister or untoward in him doing that and I accept the receipt as evidence of a genuine transaction. An email which Mr Howell sent to Mr Ashley Williams of Ash Interiors later that same evening was somewhat less genuine. The email, which is at page 306 of the bundle stated as follows:

> "Ash
>
> As you're fully aware of my commitment to this boat project, this boat has never been a business venture between Rooftop. Please advise ASAP.
>
> To whom this may concern
>
> I have been made aware of recent events between Ash Williams and Rooftops' Jamie Slocombe. I know both as very good friends but I've been brought into their financial dispute with regards to my boat that has been seized because of inaccurate information. I have been informed that the Hydrolift S24 boat has been wrongly taken with the correct investigation into the ownership of my property. As you can see through receipts and dialogue, there is no justification for the boat to have been seized as an asset of Rooftops' property. It is in fact a shared personal possession that is owned by Paul Howell, Marcus Davis and James Slocombe.
>
> Due to James Slocombe's recent financial difficulties, he has not been engaged on the refurbishment and development of the Hydrolift and his

> original share has been succumbed to other financial responsibilities of the development and refurbishment of the boat, therefore the boat's ownership is shared by myself and Marcus Davis and is not asset or therefore a financial responsibility of James Slocombe and has never been a business asset or connected to Rooftops. This boat is a personal interest and is no way connected to any business. Here are the details of the payments I have made and find attached proof of receipts."

15. The final paragraph of that email was a misrepresentation which Mr Howell made because he thought it would further distance the ownership of the boat from Rooftops. James Slocombe had never relinquished ownership of his share and Mr Howell should not have misrepresented the position in that way. However, the subterfuge was perhaps understandable in the circumstances.

16. The result of that email and pressure brought to bear on Ash Williams by the individual claimants and by Mr Williams' own wife, was that he decided to call off the enforcement process. He did that to maintain relations with the claimants in circumstances where the families were or had all been friends. On 20 July, he gave instructions to DCBL to release the boat. He (or rather his company) settled DCBL's invoice for enforcement fees and expenses in the total sum of £2,398, including VAT and the boat was released on 4 August 2017.

17. In the meantime, on 3 August 2017, I had made an order for a stay of execution. I did that on Rooftops' without notice application. The application came back before me on notice on 13 October 2017 when I gave directions which included that Rooftops' Application Notice of 3 August 2017 was to stand as the Originating Process in the claim and for Points of Claim and Points of Defence. My intention in making that order was to resolve the claim, which I then understood to be principally about damage to and detention of the boat, in the quickest and most economical way possible – an aim which, as matters have turned out, has been only partially achieved.

The claims

18. The claims in fact made have ranged rather more widely than I expected. I can group them as follows.

19. First, in respect of the seizure of the van, Rooftops claims under paragraph 66 of schedule 12, which in relevant part states as follows:

> "(1) This paragraph applies where an enforcement agent -
> (a) breaches a provision of this Schedule, or
> (b) acts under an enforcement power under a writ, warrant, liability order or other instrument that is defective.
> (2) The breach or defect does not make the enforcement agent, or a person he is acting for, a trespasser.
> (3) But the debtor may bring proceedings under this paragraph.
> (4) Subject to rules of court, the proceedings may be brought -
> (a) in the High Court, in relation to an enforcement power under a writ of the High Court;
> (b) in the county court, in relation to an enforcement power under a warrant issued by the county court;

(c) in any other case, in the High Court or the county court.
(5) In the proceedings the court may -
(a) order goods to be returned to the debtor;
(b) order the enforcement agent or a related party to pay damages in respect of loss suffered by the debtor as a result of the breach or of anything done under the defective instrument..."

20. Subparagraph 66(8) provides a statutory defence to this claim:

> " Sub-paragraph (5)(b) does not apply where the enforcement agent acted in the reasonable belief -
> (a) that he was not breaching a provision of this Schedule, or
> (b) (as the case may be) that the instrument was not defective."

21. Second, the individual claimants claim under the Torts Interference with Goods Act 1977 for the detention of and damage to the speedboat.

22. Third, Mr Slocombe individually claims damages for misuse of private information. This claim rests on the filming of the searches of the van. The nub of the claim is set out in paragraphs 36 and 38 of Mr Ralston's skeleton argument:

> "Direct Collection permitted the television crew to film the contents of personal papers of Mr Slocombe. When the TV crew filmed the contents of the van, the agents thereby used Mr Slocombe's information for purposes of collateral profit and entertainment which was wholly extraneous to their duties. That was a misuse of Mr Slocombe's confidential information and an invasion of his privacy."

23. Before turning to these claims, I should record a further aspect of the second and third defendants' unsatisfactory response to this claim. I have already mentioned the paucity of evidence deployed. It was extraordinary not to call evidence from Messrs Short and Star and, indeed, quite contrary to the second and third defendants' own interests to leave the factual defence of the claim to Ms Miah, who had no first-hand knowledge of events at all. To add to this unsatisfactory situation, the second and third defendants elected to leave the defence of the claim to its in-house legal department, in effect Ms Miah, and counsel, Mr Justin Shale, who was evidently instructed late in the day and who struggled to put his client's case to best effect on the material he was given.

24. Due to pressure of time, I heard final submissions from Mr Shale orally and allowed Mr Ralston to make his final submissions in writing, subject to a right of reply on the law in writing from Mr Shale. It was only after the deadline for those submissions in reply had passed that the second and third defendants instructed a national law firm, Messrs Bevan Brittan, to act for them. Bevan Brittan instructed Mr Chris Royle of counsel in place of Mr Shale. The submissions on the law by way of reply to Mr Ralston's closing submissions, were then provided by Mr Royle. These submissions, (and I mean here no criticism of Mr Royle), introduced a number of wholly new defences.

Conclusions

25. Notwithstanding the confusion and lacunae in both submissions and evidence, my conclusions can be set out quite shortly and are, to a large extent, dictated by my findings

of fact. I propose to set out my conclusions by reference to the events of 1 June and 19 July 2017, in each case dealing with the relevant law (which I do not propose to cite extensively) and argument.

The events of 1 June 2017

26. First the events of 1 June. In relation to this aspect of the claim, Mr Royle, the author of DCBL's written submissions but not trial counsel, took a preliminary point. (It is entirely in keeping with the chaotic management of this case by DCBL that such a "preliminary" point should be taken in closing submissions on the law in reply to the claimant's closing submissions.) The point was that any complaint about the van was outside the scope of the order of 13 October 2017 which referred only to the Hydrolift boat. Whilst, as a matter of construction of the order, that is true, I would certainly have permitted a claim in respect of the van had this point been taken at an earlier stage, as it should have been, and it is far too late to take the point now.

27. Paragraph 7 of schedule 12 provides that notice is a prerequisite of taking control of goods. That notice was not given in this case and therefore the seizure of Rooftops' van on 1 June 2017 was unlawful for that reason.

28. Paragraph 9 of schedule 12 is in these terms:

> "An enforcement agent may take control of goods only if they are -
> (a) on premises that he has power to enter under this Schedule; or
> (b) on a highway."

Relevant premises are described in paragraph 14(6):

> "... premises are relevant if the enforcement agent reasonably believes that they are the place or one of the places where the debtor -
> (a) usually lives, or
> (b) carries on a trade or business."

In other cases, the enforcement agent must apply to the court for an entry warrant under paragraph 15 which provides as follows:

> "(1) If an enforcement agent applies to the court it may issue a warrant authorising him to enter specified premises to search for and take control of goods.
> (2) Before issuing the warrant the court must be satisfied that all these conditions are met -
> (a) an enforcement power has become exercisable;
> (b) there is reason to believe that there are goods on the premises that the enforcement power will be exercisable to take control of if the warrant is issued;
> (c) it is reasonably in all the circumstances to issue the warrant..."

29. The seizure of the van and the contents of the van on 1 June 2017 was on private premises for which a warrant was needed, but which had not been obtained. The seizure was therefore unlawful for this reason also and so was the search of the van carried out (so it would appear) under the gaze of TV cameras. The fact of seizure was admitted by DCBL

in its documents and witness statements and in the Points of Defence. It is nothing to the point to say, (again a submission taken belatedly by Mr Royle), that removing the keys was insufficient to take control because this did not "secure the goods" in the same way as an immobilisation device would do. Whether the van and contents did or did not end up being validly taken under DCBL's control does not alter the fact that DCBL's agents purported to seize and detain it and exclude Mr Slocombe from it and were purporting to exercise enforcement powers in so doing. Further, taking possession of the keys to a motor vehicle does, in my judgment, secure that vehicle.

30. It follows that, subject to issues of causation and loss the first claimant's claim under paragraph 66(5)(b) of Schedule 12 is made out.

31. There are two subsidiary aspects to the events of 1 June 2017. The first is that the agents went on to Rooftops' lock-up at Summerhill Road, this time armed with the keys of which they had taken possession. According to the visit report, they found power tools there but of "low value". These were listed on the CGA. It is not clear to me whether some of the tools listed were found in the van rather than at Summerhill Road, but nothing turns on this. The CGA was left at Summerhill Road. The search of Summerhill Road was based upon or enabled by the seizure of the keys, which seizure was unlawful. But given that the tools were not taken and the operation of Rooftops' business was not or not further disturbed, and given also that by paragraph 66(2) of Schedule 12 a breach of the agent's enforcement powers did not render them trespassers, no remedy other than a declaration of unlawfulness would be available to the first claimant.

32. Second, the agents failed to provide a paragraph 28 notice in the form required by Regulation 30 of the Taking Control of Goods Regulations 2013. That would have left Rooftops in a state of doubt as to whether the van and tools had or had not been taken into control and on what precise basis, but it would not, so far as I am aware, give rise to any separate remedy.

The events of 19 July 2017

33. I turn then to the events of 19 July 2017. It was submitted to me that the true reason why DCBL proceeded to enforce against the powerboat was that such a seizure would make good television. I quote from paragraphs 68 and 69 of Mr Ralston's skeleton argument:

> "The true reason for the removal of the speedboat surfaces in a Tweet including a photo of the agents posing with the speedboat the next day. The Tweet has now been deleted. It was another breach of the confidentiality required by the national standards. Direct Collection does not explain the deletion, but it admits the Tweet, 'DCBL agents don't just remove cars. Gareth and Mitch taking control of a speedboat during their attendance in Poole at Can't Pay? We'll Take it Away'. The message communicated by the Tweet is that Direct Collection do not carry out only run of the mill enforcement work involving cars, rather their work extends to more exotic and entertaining items such as speedboats. In the circumstances set out above, Direct Collections' agents revealed themselves as intent on only one outcome on 19 July 2017."

34. The Tweet does not evidence DCBL's agents' state of mind prior to seizing the speedboat and the visit report suggests the more mundane reason that the van and tools were of insufficient value to discharge the judgment debt and the boat offered a better prospect. The values attributed to the van and the tools in the unsigned CGA was only some £600. Further, the fact that the boat was worth greatly in excess of the judgment debt did not of itself render the seizure unlawful when there were no other goods of sufficient value to seize; (see paragraph 12 of Schedule 12).

35. But the seizure of the boat was nevertheless quite clearly unlawful for the following reasons:

36. No Notice of Enforcement had been given. A notice had been sent to Rockley Boat Park. But Regulation 8 of the Taking Control of Goods Regulations 2013 stipulates that the notice must be sent to the place where the debtor carries on a trade or business. Self-evidently, Rockley Boat Park was not such a place.

37. The boat park being private property, a warrant of entry under paragraph 15 of Schedule 12 was required, but was not obtained. DCBL could not lawfully take control of goods on private premises without such a warrant. That is the effect of paragraph 9 of schedule 12 already quoted. It is therefore immaterial to consider whether or not the staff of the boat park gave permission. However, to the extent that the staff were compliant, that does not appear to have been on an informed basis and I do not regard the taking of the boat to have been truly permitted by those staff.

38. The boat did not belong to the judgment debtor; it belonged to the three individual claimants. Paragraph 10 of Schedule is in these terms:

> "An enforcement agent may take control of goods only if they are goods of the debtor."

39. In response to this part of the claim, DCBL pleaded that the agents "had reason to believe that Rooftops owned the boat". This would in turn support a defence under paragraph 66(8)(a) of Schedule 12, which I have already recited. A reasonable belief in a given state of affairs is the standard set in other parts of Schedule 12 and there is no basis to water it down to a lesser standard, (as Mr Royle in his written submissions attempted to do). Without evidence from Messrs Short and Star, DCBL were somewhat hampered in demonstrating a reasonable belief on their part – a burden which clearly rested on them. The only material on which such a belief could be claimed to rest consisted of the invoices to which I have already referred. But these were equivocal at best. More pertinently, the agents simply ignored Mr Slocombe's plausible and insistent assertions that the boat had nothing to do with the company and they failed to address or grapple with the obvious difficulty that a roofing company was hardly likely to number a speedboat amongst its assets. In short, the material that the agents had could not possibly support a reasonable belief that the boat belonged to the judgment debtor and the agents were not even called to attest to such a belief. It is likely, and I find, that the agents simply drew no firm distinction between Rooftops and Mr Slocombe. That is apparent from the language of the visit report. They regarded them as essentially one and the same. They were no more scrupulous in observing the boundaries drawn by ownership than they were in observing the boundaries drawn by the statutory requirements of notice and location. That is perhaps most readily apparent from the very surprising breadth of the overarching defence to the claim which I will come to shortly.

40. Before that, I should deal with a narrower defence which Mr Royle advanced in relation to the claims of the individual claimants. This was that it was not open to the individual claimants to advance a claim, save within the parameters of CPR rules 85.4 and 85.5 and paragraph 60 of Schedule 12. Paragraph 60(1) is in these terms:

> "This paragraph applies where a person makes an application to the court claiming that goods taken control of are his and not the debtor's.

41. The paragraph and the rules then provide a code for such applications, which includes the giving of security. These provisions do not require more detailed examination because they concern applications where goods are or remain in the control of the enforcement agents and a third party is asserting title and a claim to their return. That is not this case. The speedboat and trailer had been returned following what was, as I find, an unlawful seizure. The individual claimants were the owners at the relevant time and can assert a remedy under the 1977 Act. It is absurd to suggest that such a claim requires them to follow a procedure intended for a different factual scenario or requires the giving of security by them without which DCBL and the judgment creditor would be "prejudiced". The powers in Schedule 12 were, by section 65 of the 2007 Act, expressed to replace common law rules "about the exercise" of those powers. The Schedule was not intended to establish an exhaustive and self-contained code of rights and remedies applicable whenever enforcement powers have been deployed or exceeded. To put it another way, it was only intended to displace the common law to the extent set out and catered for by the Schedule.

42. That observation also disposes of a related argument, (also only raised or raised clearly at the eleventh hour by Mr Royle), which was that paragraph 66(2) of Schedule 12 provided a defence to a claim by the individual claimants. Paragraph 66(2), as already noted, is in these terms:

> "The breach or defect does not make the enforcement agent, or a person he is acting for, a trespasser."

43. Taken in context, the paragraph was intended to apply in relation to claims brought by the debtor. That is clear from the title of this section of the schedule, which is "Remedies available to the debtor". It is also clear from the following paragraph, subparagraph (3), which is in these terms: "But the debtor may bring proceedings under this paragraph". It is clear also from the fact that the statutory defence in paragraph 66(8) applies only to a claim brought by a debtor. But even if paragraph 66(2) were aimed at innocent third parties, it would only bar a claim in conversion or trespass where the claim rested on a breach of the Schedule or a defect in the writ or warrant. A claim by a third party would not, or not necessarily, be so grounded.

DCBL's overarching defence

44. It remains to deal with what I have called DCBL's overarching defence. This found its clearest expression in paragraph 29 of the witness statement of Ms Miah dated 10 October 2017. In that paragraph she said as follows:

> "DCBL are commanded by the High Court to enforce the High Court writ. As such, all conduct by DCBL was carried out lawfully."

45. Paragraph 32 was along somewhat similar lines:

> "If the defendant had dealt with the execution of the writ promptly and payment was forthcoming, there would have been no need for the boat to be seized or removed."

(This indeed comprised the opening part of Mr Shale's cross-examination of Mr Slocombe.)

46. These paragraphs, particularly the first, demonstrated a lamentable misunderstanding of the true legal position. Paragraph 19 of the National Standards for Enforcement Agents, published by the Ministry of Justice on 6 April 2014, states:

> "Enforcement agents must act within the law at all times, including all legislation ..."

47. A Writ of Control is not to be regarded as a kind of blank cheque or a licence to act with impunity. Wisely, neither Mr Shale nor Mr Royle relied upon or referred to this part of their clients' case in their submissions. However, it is astonishing and concerning that their clients, a body and an individual acting under statutory licence, should have done so. Taken together with the multiple breaches of procedure and the absence of proper records that I have referred to, the apparent lack of recognition or insight on the part of the persons concerned, the lackadaisical and dismissive attitude of DCBL to these proceedings and the fact that what oversight the third defendant exercised with respect to DCBL was and is apparently rendered from Florida, there are grounds to consider terminating the third defendant's authorisation to act as an enforcement officer under Regulation 12 of The High Court Enforcement Officers Regulations 2004. I will refer the case to the Senior Master for consideration of that course. She may also wish to consider the position of Messrs Short, Star and Wesson.

The claim for invasion of privacy

48. It also remains to deal with the claim for invasion of privacy. By paragraphs 38 to 40 of the Points of Claim and paragraphs 7 and 8 of the Prayer, Mr Slocombe has claimed damages for invasion of his privacy and his Article 8 rights based upon the filming by Brinkworth of the seizure of the van and the filming of the search of its contents. There does indeed seem to be considerable tension between the relationship between DCBL and Brinkworth on the one hand and paragraphs 27, 50 and 52 of the National Standards on the other. Those paragraphs are in these terms:

> "27. Enforcement agents must not act in a way likely to be publicly embarrassing to the debtor, either deliberately or negligently (that is to say through lack of care).
>
> 50. All information obtained during the administration and enforcement of warrants must be treated as confidential between the enforcement agent, debtor, the creditor and any third parties nominated by the debtor.
>
> 52. Enforcement agents should, so far as it is practical, avoid disclosing the purpose of their visit to anyone other than the debtor or a third party

> nominated by the debtor, for example an advice agency representative..."

49. On the face of it, those standards were breached in this case.

50. Further, this case would seem to have at least some features in common with the case of *Ali v Channel 5 Broadcast Limited* [2018] EWHC 298 where Arnold J awarded damages for invasion of privacy in respect of the defendant's filming of an eviction carried out by DCBL. However, Brinkworth is not a party to these proceedings and it is not self-evident that "permitting" them to film, if that is what DCBL did, would render DCBL liable for any invasion of privacy which occurred. A good deal might turn on the terms of the contract between DCBL and Brinkworth, which has not been disclosed. A claim of this type was certainly not envisaged by me when I made my order of 13 October 2017 and the simple directions I then gave were not tailored to such a claim. Further, given that the footage has never been published and given also that Mr Slocombe struck me as an extremely robust character not easily discomfited or distressed, damages for breach of privacy, if awarded, would be counted in the hundreds not the thousands of pounds.

51. In all these circumstances, I have decided to stay this claim pending conclusion of the principal claims.

Conclusion

52. For the reasons I have given, I resolve the liability issues in favour of the claimants.

53. I will direct that a transcript of this judgment is obtained at the expense of DCBL (a) so as to inform the resolution of the quantum aspects of the claim; (b) for the consideration by Brinkworth of any steps which it may wish to take; and (c) for the purpose of the report to the Senior Master, to which I have already referred.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge