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IN THE HIGH COURT OF JUSTICE

No. HQ14X01162

QUEEN'S BENCH DIVISION



[2018] EWHC 780 (QB)

Royal Courts of Justice

Thursday, 22nd March 2018

Before:

THE HONOURABLE MR JUSTICE WARBY

B E T W E E N :

GEORGE GALLOWAY

Applicant/Defendant

- and -

AISHA ALI-KHAN

Respondent/Claimant

MR ADAM SPEKER (instructed by Brett Wilson LLP) appeared on behalf of the
Applicant/Defendant.

THE RESPONDENT/CLAIMANT appeared in Person.

J U D G M E N T

MR JUSTICE WARBY:

1 This is an application by George Galloway for the imposition by the court of sanctions for contempt of court. Mr Galloway needs little introduction. He is a well-known public figure and former member of parliament. The respondent is Aisha Ali-Khan, who I shall call ‘Ms Khan’. She worked for Mr Galloway at one time as his parliamentary assistant. The allegation is that Ms Khan has been guilty of no fewer than 26 breaches of formal undertakings given by her to the court.

2 The undertakings were given by her on two occasions: on 20th June 2016 and 27th October 2017. They are recorded in orders made by me on the first occasion and by Sir David Eady, sitting as a Deputy Judge of the High Court, on the second occasion. In the first set of undertakings, Ms Khan promised, putting it generally, not to say anything defamatory or derogatory about Mr Galloway. On the second occasion, she reiterated that undertaking and gave further promises, the effect of which was that she would not publish or re-publish any reference to him.

3 The breaches are alleged to have taken place in and between October 2017 and 31st January 2018. All but one of the allegations of breach arises from a statement published or re-published by Ms Khan online principally social media. The exception is an allegation that she broke her undertakings by being a co-signatory to a letter to the National Executive Committee of the Labour Party which was, in turn, published online.

4 The application that is before me now was issued on 20th February 2018. There has been a history of correspondence over the period of about a month since then to which I shall make some reference. Ms Khan has not during that period of time been represented. Today, Mr Galloway is represented by Mr Adam Speker of counsel. Ms Khan appears as a litigant in person, without representation.

5 At the start of the hearing, I was told by Mr Speker that in conversation with his instructing solicitor before court, Ms Khan had indicated that she proposed to admit the breaches alleged against her and then to seek an adjournment to obtain medical evidence and legal representation in relation to penalty.

6 Mr Speker told me that his instructions were that if Ms Khan did make such admissions, the application to adjourn would not be opposed. Ms Khan then read from a prepared statement containing words that she had already posted in a tweet this morning. It read as follows:

“I have repeatedly stated untruths about George Galloway on Twitter as well as retweeting other people’s attacks on him. I am sincerely sorry for having done so and have deleted them. I will not be a party to any further comment about Mr Galloway on social media or elsewhere.”

7 I pointed out to Ms Khan that what Mr Speker had said suggested that she was going to go rather further. She faced 26 specific allegations of contempt set out in considerable detail in an annexe to the application notice. I asked if she admitted them, as Mr Speker had suggested she would. If she did not admit them, then the hearing would have to proceed. She gave an affirmative answer, but one which I considered to be somewhat equivocal because it referred to the fact that she had no legal advice.

8 I have borne in mind throughout that she has not had legal advice and with that, and other circumstances of the case in mind, I adjourned this hearing for what has turned out to be roughly an hour, so that she could read and consider the schedule of allegations that

accompanied the application notice and having done so, tell me whether she admitted all or some of them and if only some, which it was that she did not admit. Having done that, she has returned to court and confirmed that she admits all 26.

- 9 There were matters that I had to and did consider before deciding to proceed in this way given that Ms Khan is unrepresented and has not had the benefit of any legal advice in relation to these proceedings. I have had to reconsider those same issues in deciding whether I should accept the admissions that she has now made.
- 10 There are two main matters. The first is whether the applicant, Mr Galloway, has complied with all the procedural requirements that apply in this field. Strict compliance with the procedural regime is ordinarily a prerequisite to the imposition of any sanction for contempt and in the interests of a respondent, the general rule is that if there has been any non-compliance, the matter will not be allowed to proceed to a conclusion. Secondly, if the procedural requirements are satisfied, I would still have to consider whether it is fair to proceed on the basis of the admissions now offered, bearing in mind all the circumstances including the nature and gravity of the proceedings and their possible consequences. The maximum penalty for contempt of court is a sentence of immediate imprisonment of up to two years.
- 11 I make clear that the process of deciding whether a contempt has been committed is separate and distinct from any sentencing process that may follow and I would not, in any event, have proceeded to deal with penalty at this hearing, however it had proceeded if Ms Khan was, as has turned out to be the case, unrepresented.

Procedural requirements

- 12 I have considered the procedural requirements, on which I have had helpful written submissions from Mr Speker, but it is important that I record the following. The requirements are to be found in Part 81 of the Civil Procedure Rules. CPR 81.4(1)(b) provides that if a person disobeys a judgment or order not to do an act, the judgment or order may be enforced by an order for committal. Rule 81.4(4) explains that the same applies to undertakings given to the court. CPR 81.7 deals with the method of service of undertakings. Personal service is not required as a matter of principle because an individual who has given an undertaking knows what she has undertaken to do or not to do.
- 13 I am satisfied that this respondent was well aware of the nature and effect of the undertakings that she gave to me and to Sir David Eady. The undertakings given to me were given formally in open court by her solicitor and advocate Mr Mark Lewis and recorded in an order, a draft of which I was sent and which I approved and signed. The undertakings given to Sir David Eady were also given at a hearing. They were set out in Schedule 1 to that order which was signed by Ms Khan. The schedule contained the following statement:
- “I acknowledge that I understand the terms of this undertaking to the court and the possible consequences of failing to comply with it.”
- 14 Although an order containing undertakings does not need to carry a penal notice, it happens that both the orders in this case did carry such a notice.
- 15 The procedural requirements for a committal application such as the present are laid down by CPR 81.10 and the Practice Direction to Part 81. The application is to be made by a Part 23 application notice in the proceedings. It must set out in full the grounds on which the

application is made identifying, separately and numerically, each alleged act of contempt. CPR 81.10(3)(b) requires that the application be supported by affidavit evidence. In this case, as I have already mentioned, the application notice of 20th February has an annexe which sets out in detail each of the 26 alleged breaches. That annexe sets out the acts alleged to have been performed and why they are said to be breaches of the undertakings that they are said to contravene. The supporting evidence takes the form of a detailed affidavit from Mr Iain Wilson of Brett Wilson, who are Mr Galloway's solicitors.

- 16 Rule 81.10(4) requires a committal application to be served personally on the respondent but the court may make an order dispensing with personal service or permitting service by an alternative method. Here, such an order was made by Master Eastman on 2nd March 2018. It reads in its material part:

“Upon the court being satisfied that the claimant/respondent is in possession of the defendant's application notice 20th February 2018 and supporting evidence...”

- 17 The rules as to service have been complied with. CPR 81, PD 15.6, and the rules of natural justice require that the respondent to a committal application is told that she may be able to obtain legal aid and be given the contact details for the Legal Aid Agency. She must be given the opportunity to obtain legal advice however funded.
- 18 The question of how the court should deal with a situation where a respondent is unrepresented on a committal application was addressed by the Court of Appeal in *Brown v Haringey LBC* [2015] EWCA Civ 483. The court held that the defendant was entitled to criminal legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and The Criminal Legal (General) Regulations of 2013 at S.I. 2013/9. The court was critical of the complexity of the relevant law and called for guidance to be given, which has since been done.
- 19 The key point for present purposes is, however, that since the respondent is at risk of imprisonment or other penal sanction, the court must be scrupulous to ensure that the respondent is aware of the opportunity to be represented and the chance to apply for legal aid. In *Brown*, the Court of Appeal concluded that those points had not been made sufficiently clear and that an adjournment should have been granted to the unrepresented respondent. I am satisfied that in this case, these requirements of notice have been fulfilled. First, in Schedule 1 to the order of Sir David Eady, Ms Khan stated in terms:

“I acknowledge that I have been advised to seek independent legal advice in respect of the potential consequences of failing to comply with the terms of the order and its schedules.”

- 20 Further, the evidence bears out the submission in Mr Speker's skeleton argument that Ms Khan has been advised in writing on at least six occasions since 28th June 2017 that she should take independent legal advice in relation to allegations of contempt that were being made against her based on alleged breaches of undertakings. I have read: an email of 28th June 2017; letters of 2nd and 27th February, and 2nd March 2018; emails of 2nd and 4th March 2018; and a letter of 12th March 2018. The letter of 2nd March 2018 said this:

“...we strongly recommend that you take independent legal advice on an urgent basis. Subject to your circumstances, legal aid may be available to

you. Details of how to seek legal aid can be found at [and then the web address is given] or by telephoning [a given number].”

- 21 That letter drew to Ms Khan’s attention the extent of the court’s sentencing powers, if contempt was proved. Mr Galloway also relies in this context on the fact that Ms Khan has been involved in proceedings for contempt of court before, in which she was represented by counsel on at least three occasions. It is not necessary to set out the details. It is clear that Ms Khan is not new to these procedures nor is she someone who is ignorant of the process of retaining lawyers.

Fairness

- 22 I have also had to consider the requirement that a respondent be allowed a reasonable time in which to respond to an application and, if necessary, prepare a defence. I have looked at the evidence as to what Ms Khan learned about the application, when, and whether she has had a fair opportunity to consider and deal with the papers. I have had to consider some representations she has made in correspondence about her inability to deal with matters in the run up to this hearing.
- 23 Mr Wilson made a witness statement in support of his application to the Master for an order for deemed service. This recorded that five personal visits were made to Ms Khan’s home, there was a phone call, and a discussion ensued between the process server and Ms Khan about methods of service. The application documents were delivered to Ms Khan through her letterbox at home on 27th February 2018. She was contacted by voicemail on her landline and her mobile phone. She was texted and she was emailed. The evidence suggested and the Master accepted that Ms Khan was evading service, and I agree that that is the clear impression given by the evidence. The Master also accepted that by posting the documents through her letterbox, the applicant had brought their contents sufficiently to Ms Khan’s attention. I agree with that also.
- 24 The documents were sent to Ms Khan again on 2nd March 2018 with a copy of the Master’s order. She responded immediately. The order contained a paragraph which reminded Ms Khan that she was entitled to apply to set aside or vary the order within seven days. She was reminded of that right by email from Brett Wilson on 4th March 2018. She took no step to make such an application.
- 25 On 4th March 2018, she was offered a further set of papers and such documentation was, in fact, sent to her on 4th or 5th March 2018. On 5th March, someone tweeted:
- “It would seem that ... George Galloway ... has begun proceedings to jail former aide Aisha Ali-Khan.”
- 26 Later that evening, the same account tweeted:
- “We will be launching details of a crowdfunding campaign to help Aisha Ali-Khand defend herself against this latest unwarranted attack... Please share widely.”
- 27 Based on this evidence, my conclusion is that Ms Khan has, for many weeks, been well aware of the fact of this application and has understood its nature and its basis. She has had all the paperwork for the best part of a month. She has, as far as timing is concerned, had a full and ample opportunity to take legal advice, to seek legal aid, and to prepare a defence.

The tweets of 5th March 2018 suggest that someone was taking steps at that time, well over two weeks ago, to raise funds for legal representation.

- 28 In the correspondence that I am going to refer to, Ms Khan has not claimed to have had inadequate notice of the hearing, or of the allegations to be made, or the evidence to be relied on. She has written to Mr Galloway's lawyers on a number of occasions as I shall set out. By email of 2nd March 2018, she wrote that she had "not been very well recently". She claims that a health condition that she said she suffered from had "gotten worse" leading to more intensive treatment and stress. She said:

"I'm on a short break to help speed up my recovery... I will call you once I'm back."

- 29 In an email of 4th March 2018, Ms Khan stated that she had been in transit for the past few days and could not get access to the internet. She said her travel plans had already been arranged much earlier. She denied that she had been evading service. Mr Wilson replied on the same day at length and then resent the committal papers by email the following day. On 6th March, he wrote an email to complain that the tweets to which I have referred were evidence of further contempt. Ms Khan replied to none of those communications. On 12th March, Mr Wilson wrote and emailed with reference to administrative preparations for the hearing today. Ms Khan replied by email at 10.43 on 15th March in these terms:

"Dear Brett Wilson, I'm currently in Pakistan and have been since 1st March. I've not been able to arrange independent legal advice nor have I managed to arrange legal aid of any kind. I'm due to fly back to the UK on 20th March which does not leave me with sufficient time to seek independent legal advice or arrange legal representation."

- 30 She asked that the solicitors agree to vacate the hearing listed for today. Mr Wilson replied at ten to three in the afternoon that day saying:

"You've had plenty of time to arrange legal representation. We first wrote to you on 2nd February 2018 advising you to do this. Accordingly, we will not agree to vacate the hearing..."

- 31 It is inappropriate in the light of the decision that I am about to make to go into commentary on that sequence of correspondence beyond saying this: taking that correspondence in conjunction with a further email of 20th March, that is to say Tuesday of this week, I am satisfied that Mr Wilson's point is a sound one. There has been plenty of time to arrange legal representation. I have no medical evidence before me to bear out what was said in the emails to which I have referred, and there is considerable force in the point that has been made in correspondence, that Ms Khan has been aware of the intention to bring these proceedings and the consequent need for legal advice since as long ago as 2nd February 2018. If Ms Khan went on a trip to Pakistan from 1st March 2018, she was creating a difficulty for herself. If the papers had, in fact, been brought to her attention before she left, as the Master evidently found, her departure to Pakistan does not afford her a reason for not having the legal representation available today. Overall, it seems to me she has had a good, fair, and reasonable opportunity to consider the matter. Notwithstanding that, I have allowed her today a further opportunity to consider in detail over a period of time the 26 allegations.

Conclusion

- 32 I have gone into this detail because it is an exceptional course for the court to accept admissions of guilt of what is approaching a criminal offence from an unrepresented litigant. I have concluded that this is a case where the court should do that. Ms Khan is evidently a well-educated woman with experience of courts who has had plenty of notice of the allegations against her, and an ample opportunity to seek legal representation and arrange a defence.
- 33 I have borne in mind a point made by Mr Justice Tugendhat in *McCann & Anor v Bennett* [2013] EWHC 283 (QB) where the respondent represented himself at a substantial committal hearing arising out of allegations concerning the disappearance of Madeleine McCann. Explaining why he had refused that respondent an application for an indefinite adjournment pending representation, the judge said at [148]:
- “In a case where one party is self-represented the court will be bound to look for points that the litigant may have missed, and counsel for the other party is under a duty to the court to assist by reminding the court of points of law which may be available to the litigant.”
- 34 In making my decision, I bear in mind as a weighty factor the fact that I have been able to review all the papers in advance of this hearing and to consider, in the knowledge that Ms Khan might either not appear or not be represented, what issues might arise in relation to the 26 allegations of contempt which she might pursue by way of defence. As I have said, it is clear that Ms Khan was aware of the undertakings and what they meant. There seems to be no room for doubt that the publications complained of took place. There does not appear to be any room for Ms Khan to deny authorship of any of the publications complained of. She has impliedly admitted that already, by means of her tweet of this morning. The undertakings given are of such broad scope that it is hard to see how it could have been argued that the publications were not in breach. Again, the tweet which had already been posted before this hearing began goes a considerable way towards admitting that she has tweeted and re-tweeted defamatory and derogatory references to Mr Galloway.
- 35 For all those reasons, I accept the clear and unequivocal admission that has been made this morning and, on that basis, I find Ms Khan guilty of contempt in each of the 26 respects specified in the annexe to the application notice. Subject to details, I will grant the application to adjourn the question of penalty for the purposes that have been identified, that application being unopposed.

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This transcript has been approved by the Judge