Neutral Citation Number: [2024] EWHC 1901 (KB)

Case No: KB-2023-003770

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24th July 2024

Before:

MR JONATHAN GLASSON KC SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between:

NORTHERN LINCOLNSHIRE & GOOLE NHS FOUNDATION TRUST	**Claimant**
- and –	
KAE BURNELL-CHAMBERS (1) **LYNNE CLIFFORD (2)**	**Defendants**

- -

Mr James Todd KC (instructed by **Capsticks LLP**) for the Claimant
Mr Benjamin Bradley (instructed by **Janes Solicitors**) for the First Defendant
Mr Tim Grey (instructed by **Janes Solicitors**) for the Second Defendant

Hearing date: 26th June 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30 a.m. on 24th July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

- -

MR JONATHAN GLASSON KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT:

1. The Claimant applies for permission to bring proceedings for contempt of court against Ms Kae Burnell-Chambers ("*the First Defendant*") and her mother, Ms Lynne Clifford ("*the Second Defendant*") pursuant to the provisions of CPR 81.3 (3) and (5).

2. The Claimant's allegations of contempt arise out of a clinical negligence claim brought by the First Defendant in the Manchester County Court. The clinical negligence claim came to an end in late 2022 when the First Defendant filed a Notice of Discontinuance following the service by the Claimant of video surveillance of both the First and the Second Defendant. Thereafter the Claimant made an application under CPR 44 PD12.4(c) for a finding that the claim was fundamentally dishonest.

3. On 31 October 2022 District Judge Haisley approved a consent order in which it was recorded that the First Defendant accepted that she had been fundamentally dishonest. The Claimant had incurred costs of £145,301.62 in defending the clinical negligence claim.

4. On 20 September 2023 the Claimant issued a Claim Form pursuant to CPR Part 8 applying for permission to make a contempt application against the Defendants. On 18 October 2023 Heather Williams J gave directions leading to a permission hearing. That order was varied by May J on 8 December 2023.

5. At the hearing before me the First Defendant consented to the permission application but made clear that she did not accept that she was guilty of contempt as alleged or at all. On behalf of the First Defendant, Mr Bradley, submitted a helpful Note for the hearing and made brief submissions in relation to directions for the substantive hearing.

6. The hearing was very largely focused on whether permission should be granted in respect of the claim against the Second Defendant. The Second Defendant argued that permission should be refused in respect of the application made against her. Both the Claimant and the Second Defendant submitted skeleton arguments in advance with authorities in support and made detailed oral submissions.

7. I am grateful to all counsel for their assistance.

THE APPLICATION

8. The application before me is set out in the Affidavit sworn by Ms Ruth Day, the Claimant's solicitor and in the "*Detailed Statement of Grounds for bringing Contempt Application (CPR Rule 81.4(2)(a),(h)*" ("*the Detailed Grounds*"). Ms Day's Affidavit exhibits all of the documentation from the clinical negligence claim and runs to 1157 pages.

9. In respect of the Second Defendant the Claimant seeks permission to make a contempt application:

   a) Pursuant to CPR Part 81.3(3) and 5(a) in relation to an alleged interference with the due administration of justice; and

   b) Pursuant to CPR Part 81.3(5)(b) in relation to an allegation of knowingly making a false statement in a statement verified by a statement of truth.

10. The application pursuant to CPR Part 81.3.(3) and 81.5(a) is made on the basis that "*on each occasion when the Second Defendant accompanied the First Defendant to examinations or interviews with expert witnesses between June 2020 and May 2021, the Second Defendant witnessed, encouraged, aided and explicitly or implicitly supported the First Defendant's false and grossly exaggerated display of disability*." (para 114 of the Detailed Grounds). For convenience I will refer to this aspect of the application as the *"interference with the due administration of justice ground*".

11. The application pursuant to CPR Part 81.3(5)(b) is made on the basis that in the Second Defendant's witness statement she falsely made a number of statements in relation to the extent of the First Defendant's disability (para 115 of the Detailed Grounds). For convenience, I will refer to this aspect of the application as the "*false statement ground*".

12. I consider in detail those allegations later in the judgment.

THE RELEVANT BACKGROUND

13. In setting out the factual background I remind myself that for the purposes of permission, I must not stray into the merits of the case albeit that I am required to determine whether on the papers before me there is a strong prima facie case (see Cox J in *Kirk v Walton* [2008] EWHC 1780 (QB) at para 29 and the observations of Joanna Smith J in *Frain v Reeves* [2023] EWHC 73 (Ch) at para 24). That is a question that falls to be assessed by reference to the Claimant's evidence adduced for this hearing as well as the Second Defendant's witness statement that has been served in response to this application.

14. The First Defendant had a history of low back pain and discogenic problems and symptoms and on 2 September 2014 the First Defendant underwent decompression surgery.

15. On 10 August 2016 the First Defendant attended the Accident and Emergency Department of the Diana, Princess of Wales Hospital in Grimsby which is managed by the Claimant. The First Defendant presented with a history of numbness in her right leg and back pain. She was discharged home with a letter to her GP and a plan for a non-emergency MRI for the following morning. However, the MRI carried out the next day showed disc protrusion causing compression of the cauda equina and of the S1 nerve root. The First Defendant was thereafter transferred to Hull Royal Infirmary where she underwent decompression surgery.

16. Following that surgery the First Defendant continued to complain of pain, bladder and bowel problems, weakness and pain in her legs and disability. The First Defendant alleged that these symptoms were avoidable and were attributable to a negligent delay in diagnosis and treatment by the Claimant's staff.

17. On 5 November 2019 the First Defendant issued a claim form in Claim Number F38YM895 seeking damages from the Claimant for the injuries sustained as a result of the alleged delay in diagnosis and treatment of her condition in August 2016. The claim form stated that the damages would be "*£200,000.00+*". Subsequently the claim for damages increased significantly.

18. On 26 February 2020 the First Defendant's solicitors served the Particulars of Claim which was accompanied by a Preliminary Schedule of Loss. That Schedule contained a claim for gratuitous care which was provided by the Second Defendant and by Mr Benjamin Potter who is the partner of the First Defendant.

19. The Claimant served its Defence to the clinical negligence claim in April 2020. It admitted breach of duty, specifically that the First Defendant should have undergone MRI scanning on 10 August 2016 and admitted that the First Defendant would have proceeded to emergency decompression after the scan. However, the Claimant put in issue the extent to which the admitted delay caused any deterioration in symptoms. No admissions were made by the Claimant as to quantum.

20. Between June 2020 and May 2021, the First Defendant attended various appointments with experts. The Claimant alleges that on each occasion when the Second Defendant accompanied the First Defendant "*the Second Defendant witnessed, encouraged, aided and explicitly or implicitly supported the First Defendant's false and grossly exaggerated display of disability*".

21. The specific occasions are set out in paragraph 114 of the Particulars of Contempt:

> "*114.1 On **19 June 2020** when Ms Gouldstone visited the First Defendant at the First Defendant's home.*
>
> > *114.1.1 Specifically, on one occasion at that visit, the Second Defendant assisted the First Defendant in acting out a loss of balance by purporting to intervene.*
>
> *114.2 On **1 September 2020** when the First and Second Defendants attended for examination by Dr Plunkett.*
>
> > *114.2.1 Specifically, at that visit, the Second Defendant removed the First Defendant's socks and shoes for the physical examination.*
>
> *114.3 On **3 September 2020** when Mr Chakraborti visited the First Defendant at the First Defendant's home.*
>
> > *114.3.1 Specifically, at that visit, the Second Defendant told Mr Chakraborti that the family worried about the First Defendant falling and tended to supervise her on the stairs.*
>
> *114.4 On **22 October 2020** when Ms Daniel visited the First Defendant at the First Defendant's home.*
>
> > *114.4.1 Specifically, at that visit, the Second Defendant purported to become very distressed when Ms Daniel was asked to stand and move about.*
>
> *114.5 On **30 March 2021** when Mr Fisher visited the First Defendant at the First Defendant's home.*
>
> *114.6 On **10 April 2021** when Ms Wardle visited the First Defendant at the First Defendant's home.*
>
> *114.7 On **20 April 2021** when the First Defendant attended for examination by Dr Stacey.*
>
> *114.8 On **14 May 2021** when the First Defendant attended for examination by Dr Williams.*"
>
> (Emphasis as per original)

22. At the start of March 2021, the First Defendant's solicitors served witness evidence, including statements from the First Defendant and from the Second Defendant. A statement was also served from Mr Benjamin Potter, the partner of the First Defendant. In his statement, Mr Potter described the care that he provided the First Defendant after the 2018 surgery and, in particular, the additional care he provided after the Second Defendant had returned to work.

Mr Potter also describes the First Defendant's ongoing symptoms and disability.

23. The statement from the Second Defendant is dated 1 March 2021. In it she described the care that she gave to the First Defendant after the surgery in 2018 explaining that "*I looked after Kae full time for approximately 6 months*". The Second Defendant goes on to say that even after she had returned to work at the end of those six months "*I did more for her than I had done previously*". The Claimant alleges that the Second Defendant's witness statement was false in the following respects (the passages which are said to be false are underlined):

a) Paragraph 18.: "*Although I do less for Kae than I did, I still do more for her than I did before the second surgery. Obviously Covid 19 has changed things as both myself and Ben have been furloughed, however, before the pandemic I was looking after the children at least once a week to give Kae and Ben a rest. I still do the school runs when needed and do some cleaning when I go over to their house. I take Kae to all of her medical appointments as she is unable to drive herself there.*"

b) Paragraph 19: "*It has been really difficult seeing Kae like this. She has always been such an active person (she used to go to the gym and ride a bike) and it is difficult to see my daughter in so much pain on a daily basis. Kae has tried to return to work but it is just too much for her. She was able to return to her cleaning job after the first surgery which was good as cleaning is quite a physical job so it is quite demanding. There is no possibility of her returning to this as far as I can see and she has been told that her condition will not improve. When she had a bad day with pain, you can tell by looking at her. She looks strained and will sometimes be physically sweating and the colour will drain from her face because of how bad it is.*"

c) In Paragraph 20: "*Kae's mobility and balance are now poor. She uses a stick and uses the furniture to steady herself. She has tripped and fallen a few times and I am particularly worried about her falling down the stairs, which she has done. I try and supervise Kae on the stairs.*"

d) Iin Paragraph 21: *"Kae remains extremely limited in what she can do and still needs a lot of help. Kae doesn't want to be disabled and tries to do as much for herself as she can. However, there are things she cannot do and it is awful to know that she will be like this for the rest of her life when it could have been avoided. It is difficult seeing your child suffering from such a horrible condition."*

24. The Second Defendant signed the witness statement following a Statement of Truth that stated "*I believe the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth*."

25. For five days between 12 April 2021 and 20 April 2021 the First and Second Defendants were the subject of covert surveillance carried out on the Claimant's behalf. The First Defendant is accompanied by the Second Defendant at all times. The edited highlights of the video surveillance show the Defendants travelling by train to London and back, visiting experts' consulting rooms, and visiting other places such as a petrol station. The First Defendant is seen walking and she carries a stick for most of the footage. On some occasions the First Claimant does not use a stick at all, and her gait appears normal. The footage shows the First Defendant exiting the car and walking normally to her house and to a kiosk at a petrol station. In the Detailed Grounds the Claimant says that its "*case in relation to the Second Defendant is that her presentation on the surveillance is of a woman who is witness at first hand to, and is complicit in, the First Defendant's deception. She is aware of the charade that is being acted out by her daughter*."

26. The First Defendant signed her schedule of loss on 30 July 2021. It was calculated on the basis of the trial having been listed for 31 October 2021. The schedule claimed just over £3 million in damages. The claim included past gratuitous care of £48,789.98 and future care and assistance totalling £833,000. The future care claim was largely based on commercial care being provided though included just over £110,000 in gratuitous care.

27. The Claimant waited for the First Defendant to serve her schedule of loss (on 2 August 2021) before disclosing the surveillance evidence to the First Defendant's solicitors. An application was made on 30 September 2021 to adduce the surveillance and to serve an Amended Defence alleging fundamental dishonesty and seeking strike-out under s.57 of the 2015 Act.

28. On 22 November 2021, before a hearing had been fixed for the application to rely on the surveillance, the First Defendant served a Notice of Discontinuance in which she discontinued all of the claim. On 26 November 2021, the First Defendant served a Notice of Change stating that her solicitors had ceased to act for her. Thenceforth, the First Defendant was a litigant in person. Because the First Defendant had discontinued the claim, strike-out under s.57 of the Criminal Justice and Courts Act 2015 was no longer applicable and so on 6 December 2021 the Claimant issued an application for permission to enforce a costs order (by disapplication of Qualified One-Way Costs Shifting) under CPR Rule 44.16(1) and PD 44.12.

29. The hearing of the Claimant's application for a determination of fundamental dishonesty was listed for 1 November 2022. On 31 October 2022 DJ Haisley approved a consent order in which it was recorded that the First Defendant accepted that she had been fundamentally dishonest. At the same time, and as was also recorded in the order, the Claimant agreed not to enforce its entitlement to costs against the First Defendant.

30. It has not been alleged that the Claimant gave any indication that it intended to bring committal proceedings in the County Court and therefore the exception in CPR Part 81.3 does not apply. The court's permission is therefore required to bring committal proceedings.

THE LEGAL FRAMEWORK

31. CPR Part 81 itself says nothing about the test for granting permission. However, the principles to be applied are well established and there was no significant disagreement between the parties as to the fundamental approach to be taken. The differences between the parties arose from the application of those principles to the facts in this case.

32. In summary, permission should only be granted to make a contempt application where:

(a) there is a strong prima facie case against the defendant;

(b) public interest requires the committal proceedings to be brought;

(c) the proposed committal proceedings are proportionate; and

(d) the proposed committal proceedings are in accordance with the overriding objective.

(See *Kirk v Walton* [2008] EWHC 1780 (QB), para 29, (Cox J); *KJM Superbikes Ltd v Hinton* [2008] EWCA Civ 1280 [2009] 1 WLR 2411, para 17, (Moore-Bick LJ); *Barnes (t/a Pool Motors) v Seabrook* [2010] EWHC 1849 (Admin), para 41, (Hooper LJ); *Tinkler v Elliott* [2014] EWCA Civ 564, para 44 (Gloster LJ); *Patel v Patel* [2017] EWHC 1588 (Ch)), para 21 (Marcus Smith J); *Grosvenor Chemicals Ltd v UPL Deutschland Gmbh* [2017] EWHC 1893 (Ch), paras 105-118 (Birss J); and *Berry Piling Systems Ltd v. Sheer Projects Ltd* [2013] EWHC 347 (TCC) (Akenhead J), at para 30)

33. That fundamental approach was common both to applications to make a contempt application in relation to alleged interference with the due

administration of justice (CPR 81.3 and 81.5(a)) and in relation to an allegation of knowingly making false statements (CPR Part 81.5(b)).

34. Each ground of committal must be considered separately (*Patel v Patel* [2017] EWHC 1588 (Ch)), and the Court will not give permission unless it considers that it is in the public interest that an application to commit should be made, that being a question of judgment, not one of fact (*Cavendish Square Holdings BV v Makdessi* [2013] EWCA Civ 1540, para 79).

35. Contempt by interference with the due administration of justice requires proof of an intention to bring about a state of affairs which, objectively construed, amounts to such an interference (*Connolly v Dale* [1996] QB 20 at 125H-126B; applied most recently by Pepperall J in *Achille v Calcutt* [2024] EWHC 348 (KB), para 23). Instances of contempt which involve interference with the due administration of justice in a particular case are many and various as the helpful outline commentary to CPR Part 81 in the White Book explains (see 81CC.8).

36. The principles to be applied on an application for permission for committal proceedings for knowingly making a false statement were summarised by the Court of Appeal in *Tinkler*, at para 44, citing with approval paragraph 23 of the judgment of the judge at first instance in that case (HHJ Pelling QC):

> "23. The approach to be adopted on applications for permission has been considered in a number of authorities. The principles that emerge are the following:
>
> i) In order for an allegation of contempt to succeed it must be shown that "in addition to knowing that what you are saying is false, you had to have known that what you are saying was likely to interfere with the course of justice" — see *Edward Nield v Loveday* [2011] EWHC 2324 (Admin);
>
> ii) The burden of proof is on the party alleging the contempt who must prove each element identified above beyond reasonable doubt — see *Edward Nield v Loveday* (ante);
>
> iii) A statement made by someone who effectively does not care whether it is true or false is liable as if that person knew what was being said was false — see *Berry Piling Systems Limited v Sheer Projects Limited* [2013] EWHC 347 (TCC), Paragraph 28 — but carelessness will not be sufficient — see *Berry Piling Systems Limited v Sheer Projects Limited* (ante), Paragraph 30(c);
>
> iv) Permission should not be granted unless a strong prima facie case has been shown against the alleged contemnor- see *Malgar Limited v RE Leach (Engineering) Limited* [1999] EWHC 843 (Ch), *Kirk v Walton* [2008]

EWHC 1780 (QB), Cox J at paragraph 29 and *Berry Piling Systems Limited* v *Sheer Projects Limited* (ante) at Paragraph 30(a);

v) Before permission is given the court should be satisfied that:

a) the public interest requires the committal proceedings to be brought;

b) The proposed committal proceedings are proportionate; and

c) The proposed committal proceedings are in accordance with the overriding objective - see *Kirk v Walton* (ante) at paragraph 29;

vi) In assessing proportionality, regard is to be had to the strength of the case against the respondents, the value of the claim in respect of which the allegedly false statement was made, the likely costs that will be incurred by each side in pursuing the contempt proceedings and the amount of court time likely to be involved in case managing and then hearing the application but bearing in mind the overriding objective — see *Berry Piling Systems Limited v Sheer Projects Limited* (ante) at Paragraph 30(d);

vii) In assessing whether the public interest requires that permission be granted, regard should be had to the strength of the evidence tending to show that the statement was false and known at the time to be false, the circumstances in which it came to be made, its significance, the use to which it was actually put and the maker's understanding of the likely effect of the statement bearing in mind that the public interest lies in bringing home to the profession and through the profession to witnesses the dangers of knowingly making false statements — see *KJM Superbikes Limited v Hinton* [2008] EWCA Civ 1280, Moore-Bick LJ at Paragraphs 16 and 23; and

viii) In determining a permission application, care should be taken to avoid prejudicing the outcome of the application if permission is to be given by avoiding saying more about the merits of the complaint than is necessary to resolve the permission application — see *KJM Superbikes Limited v Hinton* (ante) at Paragraph 20."

THE SECOND DEFENDANT'S PROCEDURAL OBJECTIONS

37. In his skeleton argument, Mr Grey, on behalf of the Second Defendant, criticised the Claimant's application on a number of procedural grounds. He questioned whether the Part 8 claim form, the Statement of Grounds and the Affidavit of Ms Day satisfied the requirements of CPR Part 81.4. He asserted

that CPR Part 81.4 (2) (k) had not been complied with by the Claimant. Mr Grey argued that the provenance of the Statement of Grounds was "*a mystery*" and questioned why it contained a statement of truth. He argued that the application was insufficiently particularised such that the Second Defendant did not know the case that she would have to meet were permission to be given. Mr Grey argued that the Claimant was at fault for not serving hearsay notices in respect of the expert reports which had been exhibited to the Affidavit of Ms Day.

38. These procedural objections were maintained in Mr Grey's oral submissions albeit with differing degrees of vigour.

39. In my judgment these procedural objections are without substance and the application for permission stands or falls on whether the application should be granted applying the principles which I have set out above.

40. As to the specific objections:

a) First, the allegations of contempt have been set out in full in the claim form, Affidavit and the Grounds. The Affidavit exhibits all of the evidence on which the Claimant relies. The requirements set out by the Court of Appeal in *Cavendish Square Holdings* at para 50 have been met: *"A person whom it is sought to commit to prison needs to be provided with a full package of the documentation which is to be marshalled against him, so that he may know and have a copy of exactly what is relied on."*

b) Secondly, whilst it is correct that CPR 81.4(2) (k) has not been complied with its omission is of no significance here. CPR Part 81.4(2)(k) specifies that the contempt application must contain (amongst other matters) that *"the defendant may be entitled to the services of an interpreter*". There was no suggestion by Mr Grey that the Second Defendant (or indeed the First Defendant) required such services and there is no prejudice whatsoever in this technical deficiency in the application.

c) Thirdly, the Detailed Grounds are verified by a statement of truth in accordance with CPR Part 22.1(e) which provides that "*a contempt application under Part 81*" must be verified by a statement of truth.

d) Fourthly, I do not agree that the expert reports need to be accompanied by hearsay notices. What an expert said or did not say in their report for the clinical negligence claim is a matter of record. Whether or not the report withstands the weight placed on them in the Detailed Grounds and in the Affidavit is another matter as I discuss further below.

IS THERE A STRONG PRIMA FACIE CASE?

41. It is axiomatic that, upon an application for permission, the judge is required to find "*whether or not there is a strong prima facie case, not whether the case is established*" (Chrisopher Clarke LJ in *Cavendish Square* at para 79). The central question of whether or not there is a strong prima facie case must be the starting point and, if it is not established, it will be the end point (see Davis LJ in *Ocado v McKeeve* [2021] EWCA Civ 145 at paras 63-64.) Without straying into the merits. I am required to review critically the evidence to satisfy myself whether there is a strong prima facie case (see the judgment of Akenhead J in *Berry Piling Systems v Sheer Projects Limited* [2013] EWHC 247 TCC at para 30 (a). See also the judgment of Joanna Smith J in *Frain v Reeves & Curnock* [2023] EWHC 73 (Ch)).

Interference with the due administration of justice

The parties' arguments

42. Mr Todd argued that the surveillance evidence was critical and that was all that was needed to establish a strong prima facie case. The Claimant also relied on the First Defendant's concession that permission should be granted. Mr Todd submitted that the Second Defendant's arguments that the criminal law of joint enterprise should be imported was misconceived. Joint enterprise has not been alleged and, in any event, Mr Grey had not cited any authority to support his argument that those criminal principles should be applied.

43. Mr Todd relied on the judgment of Spencer J in *Homes for Haringey v. Fari* [2013] EWHC 3477 (QB). He argued that the case against Mr Fari was on all fours with that against the Second Defendant. Mr Todd argued that I should adopt a similar approach to Spencer J in *Homes v Haringey* and focus on "*the nub of what has complained of*" (para 19 of the judgment).

44. In respect of the interference with the due administration of justice grounds, Mr Grey argued that it was unclear whether or not the Claimant was alleging that there was a joint enterprise between the First and Second Defendants. If that was the basis of the claim, then the court should apply the principles established in the criminal law of joint enterprise. Mr Grey argued that the Claimant's case turned on inference and that a proposed inference will only be drawn against the defendant if *"the inference of dishonesty is the only possible inference that can reasonably be drawn. If more than one reasonable inference could be drawn and if any of them is inconsistent with a finding of contempt, then the [contempt] application must fail"*: *JSC BTA Bank v Ereshchenko* [2013] EWCA Civ 829, at 40. He argued that in respect of the

individual particulars of contempt under this head it could not be said that the only possible inference was dishonesty on the part of the Second Defendant.

45. Mr Grey argued that *Homes for Haringey* could be distinguished from this case and in any event the court's task was to focus on the particular circumstances as alleged by the Claimant.

Discussion

46. I do not accept that at this stage my approach should be to concentrate on the "*nub of the case*" as suggested by the Claimant. That suggestion was drawn from *Homes for Haringey* in which the court was not concerned with whether or not permission should be granted but rather whether the particulars of contempt were established, permission already have been given by Holroyde J (as he then was). Moreover, it is clear from the judgment as a whole that Spencer J made findings in respect of individual particulars of contempt (see paras 92-151). My task at this stage is to determine whether or not there is a strong prima facie case in respect of each of the grounds and in respect and each of the particulars contained within the two grounds.

47. I agree with the Claimant that in this case the video surveillance evidence is critical. However, that evidence has to be evaluated by reference to each individual particular of contempt. The video surveillance evidence was taken between 12 April 2021 and 20 April 2021, and it is important to consider each particular of contempt by reference to the time when that surveillance took place.

48. In my judgment the Claimant has not established a strong prima facie case in respect of the eight particulars relied upon in respect of the alleged interference with the due administration of justice.

49. In respect of four of them (the visit by the First Defendant's accommodation expert, Mr Fisher on 30 March 2021; the visit by the First Defendant's physiotherapy expert, Ms Wardle, on 10 April 2021; the examination by the Claimant's expert neurosurgeon, Mr Stacey on 20 April 2021 and the examination by the First Defendant's pain expert Dr Williams on 14 May 2021) the Claimant simply relies on the fact of the Second Defendant being present. In oral argument it was contended that the Second Defendant's presence would have lent support to the First Defendant's presentation but that is an assertion only but finds no support in the reports of those experts. As Mr Grey argued in his skeleton argument, "*[t]he only mention of [the Second Defendant] in the lengthy reports, all of which are hearsay and accompanied by no hearsay notice, is that she was present. No words or actions are ascribed to her*."

50. I accept that each of those particulars relate to events close in time to the surveillance evidence. Indeed, the particular of contempt relating to Mr Stacey relates to a visit that took place on the last day of the video surveillance. However, the Claimant does not particularise any act by the Second Defendant which demonstrated complicity on her part. A distinction can therefore be drawn between the claim against the Second Defendant and that against Mr Fari in *Homes for Haringey*. Although in some respects there are striking similarities between that case and this case the differences are notable. In *Homes for Haringey* Mr Fari was found to have committed contempt in lending support to his wife's false presentation to the expert by helping her to the couch; lending assistance to his wife when she needed support to walk (paragraphs 61 and 104); and dishonestly suggesting a lack of interest in documents sent or shown to him and his wife by her solicitors (para 66(iii)).

51. In my judgment, I cannot be satisfied that by her presence at these visits the Second Defendant intended to bring about a state of affairs which objectively construed amounted to an interference with the due administration of justice.

52. The particulars relating to Ms Gouldstone's visit on June 19, 2020, the attendance for examination by Dr Plunkett on 1 September 2020, the visit by Mr Chakraborti on 3 September 2021 and the visit by Ms Daniel on 22 October 2020 are closer to the facts of *Homes of Haringey* in the sense that each contain specific instances where the Second Defendant is said to have supported the First Defendant's presentation to the experts. There is however a crucial difference in that they are all at some distance in time from the video surveillance evidence which was gathered in April 2021.

53. It was the video surveillance evidence that was "*the key to arriving at the truth*" in *Homes for Haringey* (see para 67 of Spencer J's judgment) and, significantly, one of the two episodes of video surveillance in that case was recorded within a month of the visit to the expert that was central to the case against Mr Fari (see para 68 of the judgment).

54. I accept that the particulars referred to at paragraph 52 give rise to concern when considered in the overall context of the case. However, I am not satisfied that they meet the high threshold of individually establishing a strong prima facie case, in the sense that the inevitable inference was dishonesty on the part of the Second Defendant and an intention to bring about a state of affairs which objectively construed amounts to an interference with the due administration of justice.

The false statement ground

The parties' arguments

55. The parties' arguments in respect of the false statement particulars overlapped with their arguments regarding the interference with the due administration of justice particulars. Mr Todd emphasised that the video surveillance evidence was critical.

56. Mr Grey's oral submissions focused largely on the particulars of interference with the due administration of justice. He argued that the video surveillance was not such as to show the inevitable inference to be drawn was that the Second Defendant knew the statement she made to be false.

57. The Second Defendant's witness statement for these proceedings similarly focused largely on the particulars of interference with the due administration of justice. In respect of the false statement particulars the Second Defendant said that the Claimant has "*cherry picked*" passages which risks the "*quoted passages being taken out of context*". In any event, all of the passages which are quoted are said to "*based upon my genuine belief and perception*" (see para 13 of the witness statement dated 10 January 2024).

Discussion

58. In my judgment the video surveillance evidence is indeed critical. It was taken a mere month after the witness statement was signed by the Second Defendant. I watched the evidence before the hearing, during the hearing and I have viewed it again since the hearing. Without impermissibly straying into the merits of the application, I am satisfied that the video surveillance evidence ineluctably leads to a conclusion that there is a strong prima facie case that the Second Defendant knew what she was saying to be false and that it was likely to interfere with the course of justice. I have considered the entirety of the witness statement as well as the specific passages that are relied upon in the Detailed Grounds (set out above at paragraph 23). I do not accept that the passages are "*cherry picked*" as has been suggested.

59. I am required when assessing the strength of the Claimant's prima facie case to take into account "*the circumstances of the case, and will have regard in particular to the circumstances in which the statement was made, the state of the maker of the statement's mind, including his understanding of the likely effect of the statement, the use to which the statement was put in the proceedings, the extent to which the false statements were persisted in and any delay in warning the respondent that he or she may have committed contempt by making a false statement at the earliest opportunity*" (per Whipple J, as she then was, in *Newsom-Smith v Al Zawawi* [2017] EWHC 1876 (QB) at para 6 c) iv)).

60. The statement was made in the context of a very significant claim for damages by the Second Defendant's daughter. Given that the Second Defendant accompanied her daughter to the majority of the meetings with the various experts, the significant role that she said she played in her daughter's care and the express terms of the statement of truth alerting the Second Defendant to the possibility of contempt proceedings, the circumstances point to there being a strong prima facie case. In my judgment, the video evidence supports the Claimant's case that there is a strong prima facie case that the specific statements that are particularised were false and that the Second Defendant knew them to be false.

DOES THE PUBLIC INTEREST REQUIRE COMMITTAL PROCEEDINGS TO BE BROUGHT?

61. Mr Todd argued that there was a clear public interest in permission being granted. Conduct of the kind alleged undermines the justice system. He relied on the judgment of Moses LJ in *South Wales Fire and Rescue Service v. Smith* [2011] EWHC 1749 (Admin) at paras 2 to 4 which were approved by the Supreme Court in *Summers v. Fairclough Homes* [2012] 1 WLR 2004. The point was emphasised again more recently by Sir Terrence Etherton MR in *Liverpool Victoria Insurance Company Limited v Khan and Zafar* [2019] 1 WLR 3833 at paras 58-69.

62. Mr Grey argued that the court needed to consider the gravity of the alleged contempt; whether the claimant was the appropriate person to bring the contempt application; the conduct of the Claimant and their lawyers. He argued that the effect of the witness statement was "*in reality nil*" as the proceedings were discontinued. Mr Grey relied on the fact that proceedings have not been brought against Mr Potter (the First Defendant's partner who also made a witness statement in support of the gratuitous care claim, see above paragraph 22) and that the Second Defendant stood to gain nothing from the witness statement. Mr Grey argued that the proceedings were initiated as a "*tactical leverage to induce the First Defendant to admit the allegations of contempt 'in order to save her mother'*".

63. Although Mr Grey did not suggest that as a matter of principle the Claimant was the wrong person to bring the contempt application, he said that it was "*clear that it is not brought out of the purest of public interest motives*".

Discussion

64. Applying the considerations argued for by Mr Grey I am satisfied that the gravity of the alleged contempt is such that it is in the public interest for

permission to be given. Whilst it is correct that the proceedings were discontinued by the First Defendant it would be wrong to discount the importance of the witness statement. It supported a significant claim for gratuitous care which, if awarded, would have been held on trust by the First Defendant for the Second Defendant (following *Hunt v Severs* [1994] 2 AC 350). There is no basis for the argument that the Second Defendant stood to gain nothing from the witness statement.

65. The witness statement was verified by a statement of truth which expressly confirmed that in signing the statement the Second Defendant understood that proceedings for contempt of court may be brought against anyone who makes a false statement without an honest belief in its truth. As Simler LJ (as she then was) emphasised in *Clarkson v Future Resources FZE* [2022] EWCA Civ 230 at para 47 "*[t]he signing of a statement of truth is no empty formality. Its importance is emphasised by the potential liability for contempt of court if signed without an honest belief in its truth*".

66. Mr Grey's suggestion that the Claimant may not have the "*purest of motives*" is without any substance. I can see no reasoned basis to conclude that the Claimant, acting through NHS Resolution (which is the body with authority for the conduct of litigation brought by or against the NHS), is anything other than a proper claimant to bring these proceedings. The Claimant has acted properly in these proceedings and there is no basis for the allegation that the claim was brought against the Second Defendant simply to put pressure on the First Defendant.

67. Finally, the fact that I have found, having regard to the high threshold for establishing a strong prima facie case, that permission should not be given in respect of the interference with the due administration of justice ground in no way indicates that the Claimant is to be criticised for seeking permission on that ground. It was an argument that was properly open to the Claimant on the facts and my refusal of permission on that ground lends no support to the Second Defendant's criticism of the Claimant's motivation for bringing the claim against her.

68. In my judgment there is a strong public interest in permission being granted. The Claimant had incurred costs of £145,301.62 in defending the clinical negligence claim. The First Defendant was claiming over £3 million in damages and the Second Defendant would have been the beneficiary of a significant claim for gratuitous care.

WOULD COMMITTAL PROCEEDINGS BE PROPORTIONATE AND IN ACCORDANCE WITH THE OVERRIDING OBJECTIVE?

The parties' arguments

69. Mr Todd argued that given the strength of the case against the Second Defendant and that her witness statement was concerned with a significant claim for gratuitous care it was proportionate for permission to be given.

70. Mr Grey argued that "*the question of proportionality as a general proposition encompasses all those aspects that the Court should consider in assessing whether to grant permission if there is a strong prima facie case. It also includes the issues of expense and the consequences of the alleged contempt*." He argued that the costs and further litigation associated with the Second Defendant would be wholly disproportionate. The time estimate for a substantive hearing against both Defendants would be around four and half days but as against only the First Defendant it would only be about 3 days. Mr Grey also argued (as he did in relation to the public interest point) that I should have regard to the fact that the Second Defendant was 66 years old and of good character.

Discussion

71. I agree with Mr Grey that the question of proportionality as a general proposition encompasses all those aspects that the Court should consider in assessing whether to grant permission if there is a strong prima facie case. It also includes the issues of expense and the consequences of the alleged contempt. I have already found that there is a strong prima facie case against the Second Defendant. The witness statement that she signed was of significance in the clinical negligence claim, not only in substantiating a significant gratuitous care claim but also in supporting the overall damages claim by the First Defendant.

72. I am not persuaded that the fact that a decision was taken not to pursue proceedings against Mr Potter weighs in favour of the Second Defendant. I accept the Claimant's argument that the Second Defendant was in a significantly different position because she was shown on the video surveillance evidence. Matters such as the Second Defendant's age and her good character are matters that may go to mitigation if the contempt is proved but do not weigh in my assessment of proportionality.

73. I do not consider that giving permission in respect of the false statement ground would add disproportionately to the costs of the proceedings and the trial estimate.

CONCLUSION

74. The authorities have repeatedly identified the need for the court to "*exercise great caution*" before granting permission to bring contempt proceedings (*KJM Superbikes Ltd v Hinton* [2008] EWCA Civ 1280 at para 17 and *Makdessi v Cavendish Square Holdings BV* [2013] EWCA Civ 1540 per Christopher Clarke LJ at para 79). I have stepped back and considered whether in this case, having regard to the relevant principles, it is right to exercise the discretion to grant permission. Having done so, I am satisfied that permission should be granted to the Claimant to bring committal proceedings against the Second Defendant in relation to the false statement grounds. Those proceedings will be heard alongside those against the First Defendant who has accepted that permission should be given.

Directions

75. At the hearing I was informed that there was already significant agreement as to likely directions and I invite the parties to agree a draft set of directions for approval on the hand down of this judgment. If agreement cannot be reached, then I will resolve any issues of dispute on the basis of brief written submissions.