Case No: 543MC655

IN THE COUNTY COURT
AT LIVERPOOL

Civil & Family Court
35 Vernon Street
Liverpool
L2 2BX

Date of hearing: 7 May 2025

Before:

DEPUTY DISTRICT JUDGE A. WILLIAMS

- -

Between:

BURKE	**Claimant**
- and -	
BRISTOW & SUTOR	**Defendant**

- -
- -

MARC HORN, Lay Litigant for the **Claimant**
ALEX WORTHINGTON (C) for the **Defendant**

- -

Approved Judgment

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JUDGE WILLIAMS :

Transcribed from a poor-quality audio recording. There was a loud buzz on the recording.

1. This is my judgment in the matter 543MC655, *Mr Burke v Bristow & Sutor*.

2. This is a claim brought by Mr Burke under the provisions of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 which I will refer to in this judgment as "the 2007 Act".

3. The claim is that there has been a breach of the requirements of paragraph 26(1)(b) of Schedule 12 of the 2007 Act which is a requirement that:

> "*The enforcement agent must on request show the debtor and any person who appears to him to be in charge of the premises evidence of his authority to enter the premises*".

4. The cause of action arises under paragraph 66 of Schedule 12 which, at sub-paragraph (1), says:

> "*This paragraph applies where an enforcement agent:*
> *a) Breaches the provision of this schedule or*
> *b) Acts under an enforcement power, etc. which is defective*"

but that is not a position that is advanced here.

5. Sub-paragraph 66(3) provides that:
> "*The debtor many bring proceedings under this paragraph*" (in relation to a breach or a defect).

6. Paragraph 66(5) provides that:

> "*In the proceedings the court may:*
> *a) order goods to be returned to the debtor",* [not applicable here];
> *b) "Order the enforcement agent or a related party to pay damages in respect of loss suffered by the debtor as a result of a breach of anything done under the defective instrument*".

7. Paragraph 66(7) provides:

> "*Sub-paragraph (5) is without prejudice to any other powers of the court.*"

8. There is further provision in relation to the enforcement agent's reasonable belief at paragraph 66(8). However, for the purposes of this judgment I do not need to delve in to that. That is because this is a judgment on a preliminary matter, which the parties have agreed is suitable for determination before I hear the evidence.

9. I have had the benefit of a skeleton argument from the Claimant together with a copy of the judgment of His Honour Judge Harrison sitting as a Judge of the High Court in

the matter of *Leighton v Bristow & Sutor*, Claim No. J19SA002. I also have a copy of a bundle of documents from the Claimant, from which I have been referred to some documents. I have a bundle of documents from the Defendants, a witness statement from the Claimant and another witness statement from Sarah Brown on behalf of the Defendants. I have also been provided with a short bundle of legal materials and authorities by the Defendant which both parties have referred in the course of their submissions.

10. The Claimant today has been represented by a lay representative, Marc Horn and the Defendants are represented by Mr Worthington of counsel. I am very grateful to both parties for the clear and concise submissions they made in relation to the preliminary issue. The preliminary issue that I deal with is a matter raised in the defence, namely whether the claim can properly proceed against this defendant.

11. The matters raised in the Defence dated 23 July 2024 which are relevant to that preliminary issue are:

    i) paragraph 3 – "*The defendant is and was at all material times a private unlimited company carrying on business concerned with the supply and of enforcement agents*."
    ii) paragraph 4 – "*The defendant is not and was not at any material time itself an enforcement agent, creditor or a person on whom an enforcement power was conferred for the purposes of the Tribunals, Courts and Enforcement Act 2007 in relation to the Claimant.*"
    iii) paragraph 5 - "*The Claimant has no remedy against the Defendant pursuant to Schedule 12, paragraph 26 of the Tribunals, Courts and Enforcement Act 2007 by virtue of paragraph 4 above.*"
    iv) paragraph 6 – "*Further, the Defendant is not a person to whom a request can properly be made pursuant to Schedule 12, paragraph 26 of the Tribunals, Courts and Enforcement Act 2007 by virtue of paragraph 4 above.*"

12. For the purposes of determining this preliminary point I have taken the Claimant's factual case at its highest, in other words, as set out in the Claim Form and Particulars of Claim.

13. The central complaint in the Particulars of Claim (at paragraph 3.2) is that the Claimant invested significant time in this matter and is frustrated by the Defendant's failure to evidence their lawful authority together with their persistence in continuing with the process against a background of what is said to be a breach of Schedule 12, paragraph 26(1)(b) of the 2007 Act on their part. On that basis a remedy is being claimed under Schedule 12, paragraph 66. At paragraph 3.3 of the Particulars of Claim, the defendant in case J90SA002, (the *Leighton* case to which I have already referred) has a previous order against them for the same unlawful behaviour in 2023 where the claimant in that case (who is not this claimant) recovered damages resulting from their failure to show the lawful authority when asked.

14. The Defendant's position is that paragraph 26 of Schedule 12 imposes an obligation on the enforcement agent. The Defendant says 'enforcement agent' has a very specific meaning in the 2007 Act. I refer to section 63 of the 2007 Act headed "Enforcement Agent" which says at sub-section (2):

> "*An individual may act as an enforcement agent only if one of these applies", (inaudible words) "Acts under a certificate under section 64;*
> *b) Is exempt.*
> *c) He acts in the presence and under the direction of the person to whom paragraph (a) or (b) applies*".

15. In short, the Defendant's point is that enforcement agents must be individuals; there is no provision within the 2007 Act for an enforcement agent to be a body corporate. Therefore, the obligation under paragraph 26 of schedule 12 cannot fall on the Defendant. That, the Defendant says, is important here because the way the claim is pleaded is that the failure to comply with paragraph 26(1)(b) of schedule 12 was the Defendant's. It is not alleged that this was a failure by an individual enforcement agent for whom the Defendant is liable by the provisions of the Act, for example under section 66(6) of Schedule 12. The Defendant follows that up by pointing out that there is no pleading of the Defendant having liability as a related party.

16. The Defendant says that this is a failure of substance, in that the way the claim is put affects the way the evidence has been produced, the nature of the evidence produced. In this context the Defendant says it is not a matter where a simple amendment of the pleadings would allow the claim to continue. It is also pointed out that since the Defence was filed and/or served there has not been any permission sought by the Claimant to amend his claim.

17. I am not asked to determine whether the Defendant is a 'related party' under paragraph 66(6) for these purposes because it is recognised that that may require reference to evidence and material which I do not have before me.

18. There is then the issue of the High Court's decision in *Leighton*. The Defendant's case on this is although an order for damages relying on a breach of paragraph 26 of Schedule 12 was made against this defendant in that case, the question of whether or not Bristow & Sutor was the correct defendant was never a matter which was determined by a court or which was raised (as far as anyone can tell) by the parties. It is certainly true, having read the judgment, that there is nothing in the judgment in relation to whether Bristow & Sutor were the correct defendant or whether a distinction ought to be drawn between the body corporate and the individual enforcement agents who were acting in that particular case.

19. On behalf of the Claimant, Mr Horn has very helpfully taken me to a number of documents by page references in the Defendant's bundle. He invites me to find these pages are evidence that the Defendant accepted and held itself out as acting as an enforcement agent. I am referred first to page 70 in the Defendant's bundle which is a document on the Defendant's headed paper. It refers to Schedule 12 of the 2007 Act and then goes on to say:

> [Inaudible words] "*agreed with Bristow & Sutor that enforcement agents that they supply, including the enforcement agent carrying this letter, can act on Sefton Council's behalf by taking control of goods using the Schedule 12 procedure*".

20. Mr Horn says that is the Defendant claiming to have authority to take control of goods, which authority they say has been granted by Sefton Council.

21. I am also referred to page 21 of the Defendant's bundle, which is a document with the Defendant's logo at the top: "*Bristow & Sutor, Enforcement Agents*". Whilst this document is completed by an individual, J Ryan, I am directed to the fact that the logo refers to the Defendant as 'enforcement agents'.

22. At page 3 of the Defendant's bundle I am referred to a letter of 17th November 2023 from the Defendant to the Claimant which says:

> "*Re Council Tax —" made by Sefton Council "Our client has instructed us to collect the outstanding Council Tax*".

23. Again that is said to be good evidence of the Defendant acting or holding itself out as acting as an enforcement agent.

24. Mr Horn has identified similar references in a document on page 5 which is part of a notice of enforcement. It says at the bottom "*how you can get in contact with an enforcement agent, or the enforcement agent's office*" and then it lists the Defendant's contact details. At page 9 he relies upon a letter where there is reference by the Defendant to: "*Our [inaudible] has instructed us to collect outstanding Council Tax on their behalf*". At page 10, I am referred to a notice of enforcement with the Defendant's logo at the top which says: "*This notice must be given by the enforcement agent or the enforcement office*" and then to page 11 where there is a letter of 4th December 2023 which includes reference to "*preventing our enforcement agents attending your address*" - this is a letter from the Defendant.

25. Unsurprisingly, Mr Horn places significant weight on the *Leighton* judgment and he says that the facts are very similar to this case in terms of the breach, namely the alleged breach of paragraph 26 of Schedule 12. There does not seem to be any dispute that there is a very significant similarity between the two cases in terms of the factual nature, certainly for the purposes of me determining this element of the claim.

26. I am referred specifically to two passages in the judgment at paragraphs 27 and 28. At paragraph 27 the learned Judge found that:

> "*In my judgment, a householder is entitled to [inaudible] to enter his property and the fact they cannot do so*" and, referring back to their client "*— to be dissatisfied. In my judgment the defendants are in breach of paragraph 26*"
>
> the defendants in that case being the same body corporate as the Defendant in this case.

27. Then paragraph 28, he refers me to this passage:

> "*The provisions at paragraph 26 require the defendant —*" again the same defendant as in this case "*— to be able to put*

> *themselves in the position where they can provide on request their authority to act. That it seems to me is an important obligation placed upon them and is something in respect of which they needed to address their minds and make arrangements accordingly*".

28. Again, Mr Horn emphasises that this is referencing obligations being placed on *the defendant*, the defendant being the same as in this case and the background facts being, if not identical, then very similar to this case.

29. This is not, in my view, an easy issue to determine for a number of reasons. It seems to me I first need to grapple with the decision in *Leighton* and what it does and does not decide. I have had the benefit of reading the judgment in full. It was apparent having read the judgment in full that there does not seem to have been any argument or any contention before the court (there is certainly nothing referred to in the judgment) about whether the defendant, the body corporate, was the correct defendant or about whether or how it fell within the wording of paragraph 26 of schedule 12.

30. Plainly, I do not have the pleadings or the evidence from the *Leighton* case but it seems to me that Mr Worthington is right when he says that if this was a material issue the court was being asked to determine and was in dispute between the parties it would be extraordinary if it was not referred to in the judgment. There is simply no reference, the entire judgment proceeds on the basis that the defendant is the correct and relevant defendant.

31. So, whilst Mr Horn astutely draws my attention to those two specific passages from paragraphs 27 and 28 which I have quoted, in which the court specifically connects the defendant (the body corporate) with the obligation under paragraph 26 of Schedule 12 and the liability that flows from the breach of it, my conclusion having read the judgment carefully is that *Leighton* does not determine the issue of whether or not the defendant is the correct defendant, simply because that was not a question that it appears the court was being asked to determine in that case. It is a different point from the one which I am being asked to address here.

32. So in that sense I do not find that *Leighton* gives me the answer to that question. That was left unanswered because it was not a question that was asked of the court in that case.

33. I have considered both the statutory provisions of the 2007 Act and the submissions I have heard from both parties very carefully in relation to this. I am satisfied that the Defendant's interpretation of the 2007 Act in relation to enforcement agents is correct; I find that the Act defines an enforcement agent as an individual because it provides no mechanism by which anyone other than an individual can become an enforcement agent. I find, because it is plain on the face of the wording, that paragraph 26 of Schedule 12 places an obligation on the enforcement agent.

34. In deference to the submissions I have heard from Mr Horn in relation to the correspondence, it seems to be appropriate to deal with whether that makes any difference to that conclusion. In my view it does not affect my conclusion. Firstly because however the Defendant described itself in correspondence, that did not change

its status under the Act and therefore did not change its status for the purposes of paragraph 26 of Schedule 12.

35. Going further, reading the correspondence to which Mr Horn has referred me and to which I have already referred in this judgment, namely pages 7-21, 5, 9, 10 and 11 of the Defendant's bundle, it is plain from those passages that in large part the Defendant body corporate is expressly referring to it *supplying* enforcement agents. For example the authority which was referred to at page 70 expressly says that the agreement between Sefton Council and Bristow & Sutor is that enforcement agents *that the Defendant supplies* can act on Sefton Council's behalf.

36. Similarly page 21 is in fact a form that is completed by an individual enforcement officer who says: "*I am an enforcement agent. I have visited —*" and gives the name of that enforcement agent. So whilst it is headed: "*Bristow & Sutor, Enforcement Agents*" (one of the Defendant's trading styles), in reality it is to be read as: "*Bristow & Sutor, suppliers of enforcement agents*". I cannot read that as meaning that the Defendant is quite literally an enforcement agent itself.

37. I do not propose to go through the remainder of the correspondence, suffice to say that I have had regard to all of it. I am quite satisfied that it does not take the Claimant's argument any further.

38. Coming back to the pleaded claim, paragraph 3.2 alleges the Defendant's failure to evidence their lawful authority "*— together with their persistent and continuing process against a background of what is a breach of paragraph 26(1)(b) of Schedule 12*".

39. I am satisfied that if the Defendant cannot be an enforcement agent, then the obligation of 26(1)(b) does not directly apply to it. I am satisfied on the pleading that there is not a pleading of a breach of paragraph 26(1)(b) by an enforcement agent or a pleading of the Defendant being a related party so as to bring into consideration the related party provisions under paragraph 66(6).

40. I have considered whether this pleading defect is really a matter of form rather than substance and therefore whether I ought to simply allow permission to amend. However, considering it carefully I am satisfied that it is not a matter of form rather than substance. I accept the submission made on behalf of the Defendant that if the claim were to be pleaded in a different way, that would materially affect the evidence upon which the parties are likely to want to rely upon. In particular there would need to be pleadings in relation to which a particular agent or agents are alleged to have failed to comply and on what dates in order to give rise to the potential related party liability.

41. I also take into account the fact that the defence set out this issue in very clear. The relevant sections of the defence which I have read out, paragraphs 3, 4 and 6. In fact the Claimant has highlighted those passages on the copy of the defence which appears in his bundle. So it is plain that the Claimant has understood the significance of the defence dated July 2024 and application before me today.

Conclusion

42. For those reasons I am satisfied that the Defendant is not a body to whom paragraph 26 applies and, in the absence of any other viable liability being pleaded, I am satisfied that the claim as pleaded ought to fail.

43. I should say the issue of whether the Defendant is a related party is not a matter I am asked to determine today, nor is it a matter that I do determine. I did raise with the parties the comments made by Lord Leggatt in paragraph 2 of *Court Enforcement Services Limited v Marston Legal Services Limited* [2020] EWCA Civ 588. However, I do not need to deal with that point any further as it does not arise on the facts of this case, nor is it relevant to the narrow issue which I was asked to determine in this judgment.

(This Judgment has been approved by the Judge.)

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