

CA on appeal from Medway County Court (His Honour Judge Russell-Vick QC) before Pill LJ : 22<sup>nd</sup> March 2001.

**LORD JUSTICE PILL:**

1. This is a directions hearing. Mr Ashford has permission to appeal granted following an oral hearing by Laws LJ against a judgment of His Honour Judge Russell-Vick QC. The judgment of Laws LJ appears at page 348 of the large white folder. There has been correspondence and discussion as to when the appeal upon that grant of leave should be heard. It seemed to be getting nowhere, notwithstanding the good efforts of the Listing Office, and accordingly I directed this hearing.
2. What in particular puzzled me was that in the correspondence both parties were seeking mediation and yet there was still an application for a hearing date. What I cannot accept is the suggestion, which Mr Ashford has made in one of his letters, that a hearing date should be fixed, in, any event, to put the company in terrorem; in effect to make them more willing to mediate if a Court hearing is fixed. That is a course which, in my judgment, would not be fair to other litigants. A hearing date should not be fixed if the parties are sincere about mediation which they both say they are. To fix a date, for example, 10th April, merely to ensure that within the weeks between now and then the company must make progress in the mediation would not, in the circumstances of this case, be appropriate.
3. The choice therefore is whether to fix a date now or to adjourn the matter so that the parties have an opportunity to mediate. Both parties seek the latter course when the choice is put to them. The Court should not, however, wash its hands of the matter. There must come a point when it is clear that mediation is not going to succeed. In that unhappy event, which I hope does not occur, a hearing date has to be fixed. One point has been raised as to the mediation: Mr Ashford seeks an undertaking that a Main Board Director of the company has seen a letter which he has written and while Miss Ovey, for the company, is unable to give that undertaking, she sees no difficulty about a letter being written by a Main Board Director in which he acknowledges having read the letter, which I have not seen, from Mr Ashford.
4. I very much hope that mediation works in this case. Miss Ovey understandably has said that she cannot give any assurances about that. It is clear that Mr Ashford wants to raise broader issues than those for which he has leave to appeal. In my judgment their choice is a sensible one. It is appropriate that an opportunity to mediate is given. There has already been at least one meeting with that in view: a meeting on 28th February.
5. Having heard the parties, what I propose to do is to adjourn the matter without fixing a date. However, the Court must have a report in writing from each of the parties by early June. The progress report must indicate either that the mediation has failed or that it succeeded so that in early June the Court will be able to fix a date if necessary. It is almost certain that a date would be fixed at that hearing because this matter cannot be allowed to drag on. I say that not only with the view of the parties in mind but the view of the Court. It is not right that the Court should repeatedly be involved in applications such as this. This morning's application has already taken almost an hour and there are other litigants who are waiting to come on and their interests also must be considered. The passage of time does not prejudice Mr Ashford, as he has accepted, save for his worry about the position generally, because he remains in possession of the property and has not paid anything under the contract since 1998.
6. What I direct is that I reserve the matter to myself for the purpose of directions (and not beyond), that the written report from each of the parties be received by the Court by 3rd June. I will then fix a hearing, if necessary, (I very much hope it is not and that mediation will have succeeded) soon after the receipt of that report with a view to directing a hearing date in the unhappy event that that is necessary. It is unlikely, however, that the hearing would then be before the long vacation.
7. Mr Ashford also seeks to call further evidence. He has permission to appeal on only one ground and that is the only matter on which the Court is seised. In so far as the application to call further evidence relates to that matter, then the application can be made.

8. What Mr Ashford now suggests is that he had a further application for permission to appeal which Laws LJ did not hear. Plainly I have doubts about that. I regarded Laws LJ's decision upon the permission application as a final decision. However, I cannot exclude Mr Ashford from submitting to the Court that he has a further application for permission which has not been heard. I have no documentation at all to support that suggestion. If that suggestion is to be pursued then, within 42 days, the application, together with a statement from him as to why he says that the order of Laws LJ was not a final order, must be submitted to the Court and the Respondents. I will need a good deal of persuading that there can be yet a further application for permission to appeal.
9. In so far as the application for additional evidence relates to the point on which permission has been granted, then within the same time, 42 days, Mr Ashford must submit to the Court, and to the Respondents, a copy of the evidence that he seeks to adduce together with his explanation and his submissions as to why it should be adduced upon the hearing of the appeal, if that hearing ever takes place. On each point, that is the suggestion that there is an outstanding application for permission to appeal and the application to call further evidence where permission has been granted, the Respondents will have 21 days from receipt of Mr Ashford's information in which to reply to the Court with, of course, a copy to Mr Ashford. On that basis, the hearing of this appeal is adjourned.

MR A G ASHFORD appeared in person with MR ROGER DAVIS acting as a litigation friend.

MISS E OVEY (instructed by DLA Princes Exchange, Princes Square, Leeds LS4 4BY) appeared on behalf of the Respondent.