

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Claim No. B90MA221

Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Wednesday, 20th July 2016

Before:

THE HONOURABLE MR JUSTICE SOOLE

Between:

(1) CHESHIRE WEST AND CHESTER COUNCIL
(2) STEVE ROBINSON
(3) DAVID FINLAY
(4) MICHAEL JONES
(5) HELEN WELTMAN

Claimants

-v-

ROBERT PICKTHALL

Defendant

Counsel for the Claimants:

MR ADAM SPEKER

The Defendant appeared In Person

JUDGMENT APPROVED BY THE COURT

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JUDGMENT

MR JUSTICE SOOLE:

1. This is an application by the claimant Council and other claimants in this action to commit the defendant, Mr Robert Arthur Pickthall, for contempt of court in breaching the order of the court, Mr Justice Holroyde, dated 1st December 2015, and/or to activate the warrant of committal issued by Mr Justice Holroyde on 17th December 2015 pursuant to his order of that date that the defendant be committed to prison for three months, suspended for a period of two years. The defendant has on previous adjourned hearings of this application, including before me on 8th June, and Mr Justice King on 15th July, been advised of his entitlement to Legal Aid in respect of this application but has made clear that he wishes to proceed in person. He told me that he had not been able to obtain representation but, as I have previously indicated, Legal Aid would be available. He has also been advised that he has the right to remain silent and also of the risks that adverse inferences may be drawn from silence. He took the course of addressing me in this matter and, as will be seen, admitted the allegations against him.

2. The background to this application is that the defendant has been engaged in a long and persistent campaign of unlawful harassment against the defendant Council and its officers, employees and councillors. It is unnecessary and indeed self-defeating to the very purpose of the injunction that has been made to rehearse the details yet again but his campaign has involved the making of repeated allegations of criminality, corruption and dishonesty in respect of various matters. The claimants issued proceedings on 20th May 2015, seeking injunctive relief under the Protection from Harassment Act 1997. Following a hearing on 3rd July 2015, Mr Justice Edis granted interim injunctions on 21st July 2015, in similar terms to those with which this application is concerned, namely the order of Mr Justice Holroyde dated 1st December 2015. On 28th October 2015, the claimants issued an application to commit the defendant for eight breaches of clauses of the order in respect of making contact with councillors and in respect of placing postings on his website, called The Bloodhound, alleging dishonesty and corruption on the part of the Council's officials.

3. By order, dated 1st December 2015, following a hearing on 17th November 2015, at which the defendant was present, and where he received at the end a draft order in the terms that were subsequently drawn up, Mr Justice Holroyde gave the claimants summary judgment on the claim under the Protection from Harassment Act 1997 and granted permanent injunctions in the following relevant terms:

“8. The defendant: (a) must not contact or attempt to contact directly or indirectly any current employee or councillor of the first claimant by any means, including but not limited to sending emails, letters or text messages... (c) must not publish to the public or any section of the public by any means including but not limited to publication on the internet or by hard copy, bulletin or newsletter, or pamphlet, or by petition, any allegation that any current or former employee or councillor of the first claimant is dishonest or is engaged in or is suspected of being engaged in corruption or criminality of any kind, particularly, but not limited to, the purchase or sale of land at Butchers Stile playing fields, Davenham, and/or

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is engaged in or suspected of being engaged in any other cover up, of corruption or criminality of any kind, particularly, but not limited to the purchase or sale of land at Butchers Stile playing fields, Davenham”.

4. There then followed a heading, “Exceptions and limitations”, and clause 9 of the order provided:

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“Nothing in paragraph 8 above shall prevent the defendant from:

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(a) contacting John Richardson of the first claimant at Cheshire West and Chester Council legal services HQ building, 58 Nicholas Street, Chester, CH1 2NP, 03001238123, or any individual nominated by John Richardson, in relation to this order and/or outstanding litigation between the claimants and the defendant including but not limited to the claimants’ adjourned contempt application;

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(b) contacting his own councillor and appropriate individuals within the first claimant in relation to Council services which he is entitled by law to use and/or take advantage of;

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(c) disclosing any information to any legal advisors instructed for the purpose of obtaining legal advice in relation to this matter and/or outstanding litigation between the claimants and the defendant including the claimants’ adjourned contempt application.

(d) making any complaint to the police, provided that the defendant informs the police of this court order when he does so and provides a copy to them”.

Under the interpretation clause 10 of the order, 10(a) provided:

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“Council services means the services a Council tax payer is entitled to receive from a local authority, including but not limited to housing services, refuse collection and library services”.

5. Having made that order, the application to commit the defendant for contempt was adjourned to 17th December 2015. On that date, Mr Justice Holroyde duly heard the application and found the allegations proved. In the final paragraph of the note of his judgment, Mr Justice Holroyde stated:

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“I therefore conclude that on the eight occasions I have identified, Mr Pickthall has deliberately breached the order made against him. He has shown himself in his submissions to me today and in November to be not only intelligent but also in many respects an engaging man. He has also however shown that he simply refuses to recognise that the order of the court is binding on him. In my judgment, on the eight occasions, he breached the order”.

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That, I repeat, was a reference to the order in similar terms which had been made by Mr Justice Edis in July 2015.

- A 6. By this application, issued on 18th May 2016, the claimants allege that the defendant is guilty of breaching clauses 8(a) and (c) of Mr Justice Holroyde’s order of 1st December 2015. This is supported by an affidavit of Karen Elizabeth McIlwaine, a solicitor with the claimant Council. Before turning to the substantive allegations, I must deal with questions of procedure. The order of Mr Justice Holroyde contains the requisite penal notice. The claimants’ attempts to serve the order personally on the defendant were unsuccessful. As Ms McIlwaine’s affidavit records, and I accept, attempts were made on a number of occasions but he evaded service. In consequence, B an application was made on 17th February 2016 for permission under CPR 81.24 to dispense with personal service. Mr Justice Leggatt so ordered on 23rd March 2016. In any event, the defendant, Mr Pickthall, had sent a copy of the order of 1st December 2015 to the Court of Appeal on 7th December 2015 in his unsuccessful application for permission to appeal that order, so evidently he had a copy in his possession. The present application notice contains the requisite information and was C served personally on the defendant on 19th May 2016 by a process server and the defendant has attended on this and the previous hearings.
7. As to the substantive law in such allegations, I remind myself that in order to establish that someone is in contempt it is necessary to show that:
- D (i) he knew of the terms of the order;
- (ii) that he acted (or failed to act) in a manner which involved a breach of the order;
- (iii) he knew of the facts which made his conduct a breach.
- E See, for example, *McCann v Bennett [2013] EWHC 283 (QB)*, per Mr Justice Tugendhat, at paragraph 127. The burden of proof is of course on the claimants and the standard of proof is the criminal standard.
- F 8. The allegations are set out as is required within the application notice in the form of eight grounds. I will not set out the full details of what it is alleged that he had done. In particular, I will not set out the details of what he has published on the website because that would serve merely to re-ventilate his allegations in a public forum and thus to circumvent and thus to defeat the very purpose of the injunction in this case. For a similar approach, see again, *McCann v Bennett*, per Mr Justice Tugendhat, at paragraph 85.
- G 9. The first ground is that the defendant is guilty of breaching paragraph 8(c) of the order by publishing on his website a posting entitled “Cheshire Police, judicial review, refusing to investigate serious crime”, from on or about 11th February 2016. That is published on the internet to the public at large or a section of it from that date. As is confirmed by consideration of the publication, this alleges that Mr David Finlay, the third claimant, and an employee and officer of the first claimant, is engaged in criminality and is dishonest. I pause there to say that similar accusations were made against Mr Finlay which led to the previous finding of contempt by Mr Justice H Holroyde. That is said to be in breach of paragraph 8(c).
10. Ground 2 again concerns paragraph 8(c). This refers to publication on the website from on or about 12th February 2016 of a posting entitled, “How do you spot a corrupt Cheshire West Council officer/councillor?” That publication, on reading it, alleges

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B 11. Ground 3 concerns an alleged breach again of paragraph 8(c) on The Bloodhound website identifying a particular individual with a legal qualification, who is an employee of the first claimant Council, and alleging that she has committed a serious criminal offence and likewise makes an allegation against another employee of participating in crime and of being a deliberately dishonest public servant.

C 12. Ground 4 alleges that the defendant is guilty of breaching paragraph 8(a) of the order by on or about 21st February 2016 sending an email to two identified councillors with the subject matter “Conspiracy” and a reference to a Council encouraging or assisting crime, the Mouldsworth Parish Council and in breach of the requirement not to contact or attempt to contact any current employee or councillor of the first claimant, and in terms, none of which fall within the exception provided by paragraph 9 of the order.

D 13. Ground 5 again concerns an allegation of breach of paragraph 8(a) by emails sent to two named councillors on or about 1st March 2016. Again, the details of the matters raised not falling within the exceptions of paragraph 9.

E 14. Likewise, ground 6 concerns, once again supported by the relevant document, an email sent to a Council employee on or about 2nd March 2016, not falling within the exception of paragraph 9.

F 15. Ground 7 again alleges a breach of paragraph 8(a) by an email sent on or about 4th March to three named councillors, copied to four other councillors, concerning matters not falling within the exception in paragraph 9.

G 16. Ground 8 again alleges breach of paragraph 8(a), supported by the document on email, to a particular councillor, Mr Jones, again with matters not falling within exception 9. Once again the addressee is somebody who was a subject of the previous contempt application, namely Councillor Jones, which led to the committal order of Mr Justice Holroyde.

H 17. In the submissions which the defendant, Mr Pickthall, made to me he squarely admitted that he was in breach of the order of Mr Justice Holroyde in every respect alleged. He wished to argue before me his continuing and underlying insistence that his allegations of criminal, dishonest or corrupt conduct are true but I have not allowed that course. This application is concerned with whether he is in breach of the injunctions whose purpose is to prevent a repetition of these allegations. Having considered all the evidence, and applied the relevant law as set out above, I am quite satisfied on the criminal standard of proof that the defendant is in breach of the injunctions of Mr Justice Holroyde, dated 1st December 2015, as alleged in each of the eight grounds. That is my finding. In addition, the defendant so admits. There were deliberate breaches of the order and there can be no doubt that he is once again in contempt of court. I will now turn to questions of sentence.

[Hearing continues]

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18. I turn to the question of sentence. For that purpose I have of course heard the submissions of Mr Pickthall. Before I refer to those, I should identify that the courses open to me within my discretion include activation of the current suspended sentence in whole or in part and a further order including imprisonment for the breaches of the order. In his submissions on mitigation, Mr Pickthall made a number of submissions to the effect that the order and the underlying proceedings were illegal and referred to his continuing belief concerning crime and corruption. In everything he said, he appeared to hold the view that the orders of the court were not binding on him. Orders of the court are binding on him, as with any person. In his remarks on the previous occasion of finding a contempt, Mr Justice Holroyde concluded that Mr Pickthall had shown that he simply refuses to recognise that an order of the court is binding on him. He also said that he had decided to suspend the sentence by a narrow margin and added that he very much hoped that Mr Pickthall will comply with that order and that it will not be necessary to come back before the court and that he must be in no doubt what is to await him if he breaches again.

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19. I, of course, consider the matter entirely afresh in the exercise of my discretion but it is quite clear that those submissions to which I have just referred provide further demonstration that Mr Pickthall does not regard the orders of the court as binding on him. From everything he says at the moment, he appears to intend to carry on as he has done before. None of that, of course, provides any basis for mitigation. The matter of potential mitigation that he raises concerns his health in which he has been, I think provisionally, diagnosed as having hemiplegic migraine and he says that pending a full investigation and diagnosis it would be wrong to send him to prison. Those are the essence of Mr Pickthall's submissions. I have taken that latter matter into account but all in all I can see no basis whatsoever for not activating the suspended sentence in full. These were flagrant and repeated breaches of the order made by Mr Justice Holroyde. There is no element of contrition or regret and the only course, it seems to me, that the court can take is to activate the suspended sentence. In doing so, I bear in mind that the primary purpose of sentencing and committal is to ensure compliance with orders of the court and the effective administration of justice. I can see no reason for giving any further indulgence, for example, by any further suspension in the circumstances of what he has said to me and what I have read.

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20. I have considered, given his continuing approach, the question of whether there should be a further penalty for the contempt in breaching the order, namely in addition to the activation of the suspended sentence but in the exercise of my discretion I have concluded that that would, at least on this occasion, not be the right course to take. It follows that I will activate the suspended sentence in full for the period of three months and that will be my order.

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[Hearing continues]