

Case No: C70CF001

IN THE COUNTY COURT AT CARDIFF

Cardiff Civil and Family Justice Centre
2 Park Street,
Cardiff
CF10 1ET

Date: Monday, 23rd May, 2016

Before:

HIS HONOUR JUDGE KEYSER QC

Between:

CARDIFF COUNTY COUNCIL

Claimant

- and -

KEVIN HEWISON (a.k.a. Ford)

Defendant

MR. GRIGG for the Claimant

MR. JOSEPH for the Defendant

APPROVED JUDGMENT

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HIS HONOUR JUDGE KEYSER QC :

1. This is an application for the committal of the Defendant, Mr. Kevin Ford, or Hewison as he prefers to be known, for breach of an injunction order made on 8 January 2016 and subsequently ordered to remain in continuance. I remind myself at the outset that, although the proceedings are technically civil proceedings, they are in their nature analogous to criminal proceedings in that the consequences of a finding of contempt are penal and that an order of committal may only be made if the contempt of court is proved beyond reasonable doubt, or in other words so that the court is sure that the contempt was committed.
2. The Defendant is a tenant to the Claimant Council of a flat at 11 Hendre Road, Trowbridge. It is in the same building as a flat of which the tenant is the complainant, Michael Partridge. Mr Partridge's flat is at 5 Hendre Road, which is on the ground floor. Opposite Mr Partridge's flat, across the communal hall, is another flat, 7 Hendre Road, which is occupied by Joanne Patricia Bull and Russell Howells, who are friends of the Defendant. The Defendant's flat is on the first floor. There is a history of ill feeling between Mr Partridge and the Defendant.
3. On 8 January 2016 the Claimant made an application without notice for an antisocial behaviour injunction, which was based upon allegations of what may be termed obsessive and threatening behaviour by the Defendant against Mr Partridge and his partner, Nicola Battle, who with their children lives elsewhere. On 8 January District Judge Crowley made an injunction order against the Defendant, forbidding him to cause a nuisance and/or annoyance or to use or threaten to use violence against Mr Partridge or Ms Battle and to cause alarm, distress or harassment to Mr Partridge and Ms Battle. He attached a power of arrest to the injunction order and directed that the order should remain in force until 8 January 2017 unless revoked in the meantime.
4. The injunction was served on the Defendant on 14 January 2016; that is proved by papers on the court file and is not in issue. The return date for the injunction application was to be 15 January but was adjourned until 9 February. In the event it did not take place. On 28 January the matter came before District Judge Phillips on an allegation of breach and after an adjournment, during which the Defendant was remanded on bail, the matter came before His Honour Judge Seys Llewellyn QC on 24 February 2016. The allegation of breach was that on 22 February the Defendant shouted to Ms Battle: "Tell him I'm going to fucking kill him. I'm going to fucking kill you. I'll see you in court on Thursday, you're dead."
5. On 25 February after a remand on bail Judge Seys Llewellyn made findings of breach as alleged and sentenced the Defendant to twenty-eight days imprisonment, of which as I understand he served half.
6. The present application relates to an incident on the night of 14 to 15 May. The matter came a week ago before His Honour Judge Curran QC, who adjourned the matter until today and remanded the Defendant in custody. I have read written evidence from police officers who attended at the scene. I have also read witness statements from Ms Bull and Mr Howells; despite having been expected to give evidence, they did not make themselves available to do so, and the weight that can be attached to their evidence is accordingly reduced on account of their non-attendance and unavailability for cross-examination. I have read a witness statement from Mr

Partridge given to the police on 15 May 2016 and I have heard oral evidence from him and from the Defendant.

7. The nature of the incident and the competing evidence can be stated relatively shortly. Mr Partridge does not spend a great deal of time at his flat. According to the Defendant this is because he pretty much lives with his girlfriend and abuses the benefits system, returning home only when (as the Defendant puts it) he has had enough of her and the children. Mr Partridge's evidence is that the reason he does not stay at his flat very much is because he is scared of the Defendant; accordingly he stays on the whole with his father. At all events, on 14 May Mr Partridge returned home after being absent from it for some time. There is an issue as to whether or not he saw the Defendant that morning. Mr Partridge says that the Defendant asked him to let him in because he had locked himself out and that he did so by means of the buzzer system in the block of flats. The Defendant denies that. It is not necessary to resolve that dispute.
8. There was an incident that night. Mr Partridge says that he came back in the evening some time between 9 and 10 o'clock at night, probably nearer to 10 o'clock, and his front door was obstructed by a set of golf clubs that was leaning against the door. He says he moved the golf clubs out of the way to enter his flat, went inside his flat, then heard the door being kicked and the Defendant shouting words to the effect "I'll kill you". Then he heard the sound of what he took to be a golf club being struck against the metal railings on the stairs at the flats. He did not come out of his flat, but he heard shouting continuing and the banging of the railings continuing.
9. The evidence of the Defendant is to the effect that he was in his friends' flat at number 7 Hendre Road, when he heard his own front door upstairs being hit or kicked. He came out of number 7 and saw Mr Partridge, who by this time was back in the communal area of the ground floor. Mr Partridge told him to move his "stuff", referring both to the golf clubs and to clothes that were drying on a line in the communal hall, having been brought in from outside. Then Mr Partridge threw the clothes and the golf clubs and pushed the Defendant, who stumbled against a wall. Mr Partridge went back into his flat. The Defendant went into number 7, stayed there for a while, then tried to carry his stuff upstairs, but the golf clubs fell out of the bag; this is said to be the explanation for the noise heard by Mr Partridge. The Defendant stayed in his own flat for a while with his friend, Mr Howells, and then returned to number 7. Some time later, in the small hours of the morning, Mr Howells and Ms Bull asked him to leave, because they were concerned about the effect his irate and agitated behaviour was having or would have on their children. The Defendant said in evidence, "I'm quite loud when I get upset", and having seen him give evidence I have no difficulty in accepting the truth of that statement. But he denied saying anything to the effect of "I'll kill you"; he said, "I didn't know what I was saying. I don't know what I was saying but I wasn't threatening anybody."
10. Mr Howells' witness statement says: "At about 12 to 12.30 I could hear the other man [Mr Partridge] shouting about some golf clubs outside his flat and graffiti on the doors. I looked through the spy hole and saw this male push golf clubs into Kevin. Kevin fell against the wall and banged his head." The time there given is unlikely to be correct; it is probably about two hours after the initial incident took place.

11. There are three recorded “999” telephone calls made by Mr Partridge to the police on the night in question. I have listened three times to the recording of the first call and twice to those of the second and third calls. The time of the first call is uncertain, but it appears likely that it was somewhere around 10.30 p.m. In that telephone call Mr Partridge can be heard in an agitated state. There is clearly audible shouting from a man in the background; the shouting is agitated and apparently aggressive, though it is not possible to hear what is being said. There appears to be a quieter woman’s voice also; that is likely to be the voice of Ms Bull. I am entirely satisfied that the loud voice is that of the Defendant.
12. The second call was made probably within half an hour of the first. In that call Mr Partridge says that what he took to be the sound of golf clubs being struck against the metal railings had been audible, but it is difficult to make out anything of significance outside the flat in the second call.
13. The third call, which according to the police log was made at about 3.15 a.m. on 15 May, does have some shouting near the beginning, though it is not as distinct as on the first call. But thereafter one cannot hear anything taking place outside the flat, although Mr Partridge said that he could hear the Defendant. Towards the end of the call Mr Partridge said that he would seek out, indeed would kill, the Defendant if the police did not do something about it. But it is fair to say that Mr Partridge was highly agitated in this call.
14. I turn to this application. The notice to show good reason on the N78 form alleges that on 15 May 2016 (that is the morning rather than the prior evening; the date is not critical for these purposes) “you were rattling a golf club along the communal stair railing and threatened to kill Mr Michael Partridge.” The allegation that there was the rattling of a golf club along the communal stair railing is not proved to my satisfaction. It was not seen. There were noises. The noises that are audible on the police call seem more like a banging, maybe a hammering, on a door or something like that. I cannot hear metal on metal. That is not to say that it did not happen. But I am not concerned with the balance of probabilities; I am concerned with what is proved beyond reasonable doubt. This specific allegation is not made out.
15. The second allegation is that the Defendant threatened to kill Mr Partridge. Having considered the available evidence, I am not satisfied that that allegation either is made out. It is quite clear, and I have no doubt at all, that the Defendant was in breach of the injunction in that his behaviour involved a nuisance and annoyance and, I am quite satisfied, at least the implicit threat of violence. It also was behaviour that was likely to and did cause alarm and distress to Mr Partridge; one need only hear the recording of the first call for that to be clear. Having seen the Defendant give evidence, I have not the slightest doubt that he lost control of himself. But the allegation that he threatened to kill seems to me to be doubtful. I note that in the police report Mr Partridge is reported to have stated that the Defendant’s reaction to the moving of the golf clubs was to say, “Want some, do you?” The report also records that when the police first attended on that evening (they appear to have attended twice) Mr Partridge’s attitude to the Defendant was sympathetic, but that thereafter the Defendant had continued to behave in the same way, walking up and down the corridor, hitting the golf clubs against the railings in the communal hallway, and shouting “Want some, do you? Come on then.” I have no doubt but that the Defendant did use language to that effect, whatever were the precise words used. But

the complaints recorded by the police do not involve an allegation that there was a threat to kill, and the evidence in that regard has left me unpersuaded to the high standard necessary.

16. That leads to the unsatisfactory conclusion that I find that there has been a clear and obvious breach of the injunction, but it is not the breach specified in the Notice to Show Good Reason. That is because the Notice to Show Good Reason has been drawn in a way which, as it seems to me, was unduly and unnecessarily restrictive of the nature of the allegations. The advocates may address me on the appropriate course to take in those circumstances.

(Following submissions on above invitation)

17. I have in the light of my judgment an application by the Claimant Council to amend the Particulars on the Notice to Show Good Reason by the addition of these words: “Alternatively on 14 May 2016 shouting aggressively and abusively at Michael Partridge thereby causing a nuisance and annoyance and causing him alarm and distress”.
18. I have the power to grant an amendment in these circumstances, though it is a power to be exercised only with caution, given the nature of the jurisdiction.

(Following further, invited, submissions by Mr. Joseph)

19. For the Defendant, Mr Joseph objects to the application to amend on two grounds. First, he says that, if a more generalised allegation of this nature been made at the outset, greater efforts would have been made through an application for an adjournment to get the two witnesses, Patricia Bull and Russell Howells, here to give evidence. Bluntly, that wholly lacks realism. Statements were taken from them and they were asked to give evidence and apparently said they would give evidence; all this, in circumstances where the allegation was of a threat to kill. They made themselves unavailable to give evidence. The idea that the Defendant and his Solicitor, though content to proceed without an application for an adjournment when the witnesses had failed to turn up in respect of an allegation of a threat to kill, would have made more strenuous efforts to secure their attendance to answer an allegation of causing nuisance and annoyance is implausible and nonsensical.
20. Second, Mr Joseph says that the Council could and should have made this application at an earlier stage. That I think is right. However, my concern is not that the Council’s position should be vindicated because there is an interest in them winning if they have a good case rather than losing. That is not the point. I have to have regard to two important factors. The first is fairness to the Defendant, who must have had a proper opportunity to answer the case against him. The second is that the court should not be placed in the position of having to wink at plain and obvious disobedience to its orders, unless fairness to the Defendant dictate that it do so.
21. In the circumstances of this case, the hearing of this application has explored this incident in as full a manner as it could possibly have been explored. It is entirely unrealistic to suppose that it might have been explored differently if the amendment had been made earlier. There is no unfairness to the Defendant. It is manifest that the Defendant was in breach of the order, though not in respect of a threat to kill, and I

should regard it as highly unsatisfactory in those circumstances to have to ignore that contempt.

22. I shall accordingly allow the amendment, which accords with the findings that I make. I am satisfied that the Defendant did direct aggressive and abusive shouting at Michael Partridge, and that in so doing he committed a nuisance and an annoyance and caused Mr Partridge alarm and distress. I find that there is therefore a breach in fact of both limbs of the injunction.
23. So far as sentence is concerned I shall hear what is said by Mr Joseph, but I will offer some prefatory remarks which might be of assistance to him before he addresses me.
24. The Defendant has already been sent to prison for contempt of court in disobedience to this injunction; that counts strongly against him. However, the nature of the breach that I have found proved is not quite as serious as it appeared to be initially. It was put as a threat to kill. But what it really comes to is that there was loud, aggressive and abusive shouting. That was bad behaviour but it does not follow, I think, that the consequences need be as severe as they might otherwise have been.

(Following further submissions by Mr. Joseph)

25. Mr. Hewison, would you stand up please. As you hear, I found that you were in breach in the manner you have heard me describe of basically shouting in a manner that caused nuisance and annoyance and did, I am satisfied, cause alarm and distress. Now if I had found that you had issued any threat to kill, and given that you have already been sent down for a twenty-eight day term, you would have gone down for significantly longer. But in the circumstances, given the nature of the breach I have found, I am going to sentence you to fourteen days immediate imprisonment. But you have served seven days. As you would be released after serving half of the sentence, the effect of that is that you will be released. So I am not going to issue a warrant for your arrest and have you returned to prison.
26. Can I make this clear. I do not want to preach at you. Your behaviour as I find it to be—and I know you won't have it, but your behaviour as I have found it to be—is unacceptable. If you do breach the order again, then with two breaches under your belt you are going to inevitably have a lengthy sentence. Apart from anything else, that won't do you any good. Again I am not trying to teach you things you already know, but it is clear that you have problems. You have mentioned that you have some mental health issues, and I think you just have to try to address these for your own sake as well as the sake of other people. But please bear in mind if there is another breach then next time instead of it being a shorter period it will be a significantly longer period.
