

**CARDIFF FAMILY COURT**

No. B70CF083

2 Park Street  
Cardiff, South Wales.

7<sup>th</sup> November 2016

Before:-

**DISTRICT JUDGE PHILLIPS**

**CADWYN H.A. LIMITED**

Applicant

v

**DEAN BEARD**

Respondent

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**JUDGMENT**  
(As Approved)  
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Judgment:

**DISTRICT JUDGE PHILLIPS:**

1. I am dealing with an application relating to the committal of Mr. Beard for his contempt of this Court for a breach of an injunction order which was made on the 17<sup>th</sup> December 2015. The extent of the breach is the defendant's attending at a property that he is prohibited from attending. Mr. Beard first came before me last Monday when I adjourned the hearing for him to take legal advice. He tells that he contacted the firm of Martyn Prowel on Wednesday of last week and that they promised to get back to him, but they have not done so. He has not telephoned the solicitors again and agreed quite sensibly that I should today proceed with the hearing.
2. I have heard from Mrs. Gladwin for the claimants, and I have heard from the defendant in person, who explained to me that the property at which he was found is his father's property. His father is not very well and he simply wanted to see him.
3. However, he also understands that he should not be at the property and that if he is found at the property again then that is likely to lead to a further hearing when of course the Court will again have to consider the appropriate sentence to impose.
4. There are two matters before me this afternoon. One relates to the alleged breach which Mr. Beard admits to his credit. This is a case where clearly there has been a lawful arrest.
5. The other relates to an application the claimants make to extend the terms of the existing injunction. That injunction order was made on the 17<sup>th</sup> December 2015 and Mr. Beard is content that it be extended for a period of three months. I should say the claimant's initial application was to extend to a period of six months, but they are prepared to agree to a period of three months, but strictly on condition that there is no further breach. If there is a further breach then the claimants have made clear that they will invite the Court to extend the term of the injunction for a period greater than three months.
6. Dealing firstly with the breach, I have correctly been referred to the Sentencing Guidelines Council which deals with the appropriate sentence to apply in this case. I am satisfied that a suspended sentence of imprisonment is the appropriate sentence for me to apply. I am satisfied that the breach falls within what is referred to as the "lesser degree" column. Therefore, the starting point should be six weeks' custody. There is no doubt in this case that there has been a failure to comply with the original order. I take into account that this is the third arrest, although I have to make clear that the first arrest was not proceeded with so far as the claimant was concerned as a result of the defendant being committed to hospital.
7. The second arrest was not proceeded with by the claimants, their having difficulty in obtaining evidence from a witness. Therefore, to be fair to the

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defendant this is the first breach which has been proven. I am satisfied that setting aside and disregarding the earlier two, there ought to be a suspended sentence imposed because I think that that is a sufficient punishment for the defendant in this case and is likely to secure his future compliance with the order of this Court.

8. I take into account the circumstances of the breach which again I think justifies the order that I am about to impose.
9. Mr. Beard, the order that I am going to make is firstly, I am going to say that the term of the injunction order made on the 17<sup>th</sup> December 2015 be extended to the 18<sup>th</sup> March 2017. So that is an extra three months.
10. Secondly, I am going to say that you be sentenced to a period of imprisonment of six weeks, but suspended, which means it does not take effect, provided you comply with the terms of the injunction order that was made back in December of 2015.
11. We discussed when you were with me last week the order. You know what you have to do. Provided you comply with the terms of the order that is the end of this case. You will not have to come to Court again. You will not go to prison. That will be the end of it.
12. If, however, you do not comply with the terms of the order, then there will be two consequences. You will be arrested. You will be brought back to Court, and the suspended order will be activated.
13. MR. BEARD: How long is it for?
14. DISTRICT JUDGE PHILLIPS: Six weeks.
15. MR. BEARD: So why did I agree to three months when she spoke to me outside? Why didn't I just say no?
16. DISTRICT JUDGE PHILLIPS: You could have said no, but then it would have been up to me to decide whether it should have been three months or six months. But let me explain to you. The consequences of a further breach will be this sentence will be activated and then you would also need to be dealt with in connection with a future breach. Mr. Beard, I am hoping that that is purely academic, that you will not breach the order. You know what you have to do. Just comply with the terms of the order. If my memory serves me correctly I think Mr. Thomas handed you a copy last week?
17. MR. BEARD: Yes.
18. DISTRICT JUDGE PHILLIPS: So you would have had a copy originally. You had another copy last week. It is very simple, in particular in your case you have just got to keep out from Connaught Road. So it is really simple. It is not a difficult order to comply with. But I want to stress to you, because nobody wants to send you to prison, but you need to comply with the order. All right?

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19. MR. BEARD: Prison is six weeks, three weeks, isn't it?
20. DISTRICT JUDGE PHILLIPS: It would be probably. But again, Mr. Beard, I hope that is academic.
21. MR. BEARD: Yes.
22. DISTRICT JUDGE PHILLIPS: Because you just need to make sure you do not go to prison because nobody wants to send you to prison. We just want to get you to comply with the order. All right?
23. MR. BEARD: Yes.
24. DISTRICT JUDGE PHILLIPS: Are you doing anything about costs? I suppose it is academic.
25. MRS GLADWIN: Yes, it is. The claimant is not seeking any order on costs. Sir, could I just confirm, more for Mr. Beard's sake, although I think it is implicit, you have ordered a suspended sentence for six weeks? How long were you envisaging the suspension?
26. DISTRICT JUDGE PHILLIPS: I think logically it should be until the end of the term of the term of the injunction.
27. MRS GLADWIN: Yes, I am not intending making any submissions. It was just for Mr. Beard's sake so that he knows how long that suspension remains in place for.
28. MR. BEARD: I still do not understand?
29. DISTRICT JUDGE PHILLIPS: What it means, Mr. Beard, is that you need to comply with the terms of the order and the order has been extended to the 18<sup>th</sup> March.
30. MR. BEARD: I still don't understand?
31. DISTRICT JUDGE PHILLIPS: What is it you do not understand?
32. MR. BEARD: Is this how it goes? Three months. I go to Court in three months. Six weeks' imprisonment?
33. DISTRICT JUDGE PHILLIPS: If you breach the order, in other words, let us give you an example. The order says that you cannot enter Connaught Road. All right?
34. MR. BEARD: Yes.
35. DISTRICT JUDGE PHILLIPS: Let us assume that you do.
36. MR. BEARD: Yes.
37. DISTRICT JUDGE PHILLIPS: Let us assume you are caught.

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38. MR. BEARD: Yes.
39. DISTRICT JUDGE PHILLIPS: Then let us assume the police arrest you again.
40. MR. BEARD: Yes.
41. DISTRICT JUDGE PHILLIPS: Then you are brought back to Court.
42. MR. BEARD: Yes.
43. DISTRICT JUDGE PHILLIPS: All right? Let us assume you admit it and you say, "Yes, I was there."
44. MR. BEARD: Yes.
45. DISTRICT JUDGE PHILLIPS: Or the claimant calls witnesses, it could be the police officer, for example, who will come to Court and say, "Yes, he was there. I arrested him."
46. MR. BEARD: Yes.
47. DISTRICT JUDGE PHILLIPS: What will happen then is that this sentence, which is six weeks, which is now being suspended – so it is not taking effect – that would be activated. So immediately there will be six weeks. Then, because it is another breach, the Court would then have to decide, "Well, what do we do about this further breach?" So you would have the six weeks which would be activated and then in addition whatever sentence the Court thought you ought to get on top.
48. MR. BEARD: Okay.
49. DISTRICT JUDGE PHILLIPS: That is what it means. Do you understand?
50. MR. BEARD: Yes, I understand.
51. DISTRICT JUDGE PHILLIPS: I am hoping that you will not see me again, and you will not see any of my colleagues again, because you are going to comply with the order.
52. MR. BEARD: Yes.
53. DISTRICT JUDGE PHILLIPS: That is all I am asking you to do, to comply with the order.
54. MR. BEARD: Yes, sir.
55. DISTRICT JUDGE PHILLIPS: Then that is the end of it.
56. MRS GLADWIN: Sir, if I may just clarify again for Mr. Beard's sake? So when we were discussing the extension of the injunction then, yes, I was discussing with Mr. Beard purely the terms of the extension of the injunction.

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Of course, sir, it would be entirely inappropriate, wrong, and improper of me to have discussed any potential sentence with Mr. Beard because that is entirely a matter for the Court and it is absolutely nothing that I could or properly should have said. Of course, when Mr. Beard was here on the last occasion with Mr. Thomas the same submissions were made in terms of a suspended sentence. So the extent of any agreement, sir, the claimant could have properly reached with Mr. Beard was the extension of the injunction itself.

57. DISTRICT JUDGE PHILLIPS: Yes. I think, Mr. Beard, that the point that Mrs Gladwin is making is this. She could discuss with you the issues of extending the injunction order. She could not really discuss with you what the Court was going to decide to do with you because that is a decision for the Court. It is not a decision for them. It is not a decision for you quite frankly. It is a decision for the Court. The Court had to listen to the two sides. It has to look at the evidence and then make whatever decision it thinks is appropriate. I think the point is that she was not being difficult, she just could not discuss it.
58. MR. BEARD: I understand.
59. DISTRICT JUDGE PHILLIPS: It would be wrong of her to discuss with you what sentence the Court would be likely to pass. All right?
60. MR. BEARD: All right.
61. DISTRICT JUDGE PHILLIPS: Is there anything else? Do you want to ask anything else? Are you fairly clear now?
62. MR. BEARD: Do I get a letter or anything?
63. DISTRICT JUDGE PHILLIPS: You will get an order. The order will be typed up. Where are you living?
64. MR. BEARD: My mum's.
65. MRS GLADWIN: Yes, sir, I do have the address, but, sir, we have in the past had difficulties locating the defendant and with personal service. I wonder whether it would be permissible in the order for there to be substituted service by way of delivering the committal order through the letter box at mum's address? That has certainly been an order that has been made in previous applications in this matter.
66. DISTRICT JUDGE PHILLIPS: We can deal with it in two ways. We can deal with it in that way or how quickly can the order be typed? I am looking at my Clerk.
67. MR. BEARD: You can post it, I don't mind. I will get it.
68. DISTRICT JUDGE PHILLIPS: It will be hand delivered.
69. MR. BEARD: Yes, that's okay.

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70. DISTRICT JUDGE PHILLIPS: We would not rely on the post.
71. MRS GLADWIN: It will be hand delivered to mum's address.
72. DISTRICT JUDGE PHILLIPS: If I say permission be given for the order made today to be served upon the defendant by posting a copy of the same through the letterbox to his mother's address. 14 Glan Ely Close, Fairwater, Cardiff CF5 3EJ. So I will say posting the copy of the same in a sealed envelope addressed to the defendant through the letterbox. Thank you.

*AVTS REF: 6417/H5298*