

IN THE COUNTY COURT AT WALSALL

Case No: COOWJ389

Bridge House  
Bridge Street  
Walsall  
West Midlands WS1 1JQ

Tuesday, 26<sup>th</sup> April 2016

Before:

HIS HONOUR JUDGE MITHANI QC

B E T W E E N:

WALSALL HOUSING GROUP LIMITED

Claimant

- and -

DANIEL ALAN CARTER

Defendant

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1<sup>st</sup> Floor, Paddington House, New Road, Kidderminster DY10 1AL  
Tel. 01562 60921; Fax 01562 743235; info@caterwalsh.co.uk  
and  
Transcription Suite, 3 Beacon Road, Billinge, Wigan WN5 7HE  
Tel. & Fax 01744 601880; mel@caterwalsh.co.uk

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MR M SINGLETON appeared on behalf of the CLAIMANT  
THE DEFENDANT appeared in Person, assisted by his McKenzie Friend, Ms H Trott

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JUDGMENT AS APPROVED BY THE JUDGE

JUDGE MITHANI:

- 1 This is an application by Walsall Housing Group for the committal of the defendant, Daniel Alan Carter, to prison for contempt of court for allegedly having breached the terms of an injunction dated 5<sup>th</sup> April 2016.
- 2 The circumstances leading to the grant of the injunction are set out in a witness statement dated 4<sup>th</sup> April 2016 provided by Dawn Janet Parsons, a community safety officer for the claimant. They do not require any mention by me.
- 3 The complainant in respect of the alleged breach, Raymond Berry, and members of his family, have had issues with the defendant for some considerable time. As a result of those issues, the defendant was convicted for racist harassment towards Mr Berry's then 12-year old daughter in 2011, and subsequently for racially aggravated harassment, for which he received a nine-month custodial sentence and in relation to which he was made subject to a restraining order for a period of two years which expires in December of this year. He is presently on licence in respect of that sentence of imprisonment and was subject to it when he is alleged to have acted in breach of the injunction.
- 4 The application for the injunction itself against the defendant was made when the defendant came to stay with his mother who lives in the same neighbourhood as Mr Berry and his family. He was subject to the restraining order to which I have made reference at the time. But the claimant considered its terms to be insufficient to protect Mr Berry and his family from the actions of the defendant. The evidence of Mr Berry and (the written evidence of Miss Parsons) was that no sooner had the

defendant come to live with his mother than the racist and other behaviour which had occurred in the past towards the Berry family started.

- 5 In consequence, the claimant applied for, and obtained, an injunction against the defendant, the terms of which included the following:

“Not to cause or threaten to cause any nuisance or annoyance whatsoever at any time to any person living or visiting Broadmeadow, Walsall, or to anyone engaged in lawful activity in the locality and specifically not to behave in such a manner, directly or indirectly, towards Charlotte Berry, Raymond Berry or any member their family, in particular their children, Davina Berry, Nikita Berry, Kieran Berry and Amelia Berry, in any location.”

“Not to behave in a violent, intimidating, abusive, aggressive or threatening manner in any way whatsoever towards anyone living in or visiting Broadmeadow aforesaid, or to anyone otherwise engaged in lawful activity in the locality and in particular behave in such a manner, directly or indirectly, towards...[members of the Berry family to whom I have already made reference].”

“Not interfere with or harass in any way whatsoever anyone living in or visiting Broadmeadow...”

- 6 The particular way in which the defendant was prohibited from behaving towards

members of the Berry family was in these terms:

“Not to behave in such a manner, directly or indirectly, towards Charlotte Berry, Raymond Berry or any member of the Berry family, specifically their four children.”

- 7 The injunction was made on 5<sup>th</sup> April 2016 by District Judge McQueen and was supported by a power of arrest. The claimant alleges that the injunction was breached on 6<sup>th</sup> April 2016 moments after it had been served upon the defendant. It was alleged to have been breached by the defendant in the following way (and I take the allegation from the schedule of allegations included at page 23 of the bundle):

“It is alleged that the defendant breached paragraphs 1, 2 and 3 of the injunction by being verbally abusive towards Charlotte Berry at approximately 4.25 p.m. by waving his arms around and shouting ‘Your family is dead. I’ve been at court for the third time, I am gonna get it sorted’.”

- 8 The schedule asserts that these words were repeated several times.
- 9 The evidence upon which the claimant relies in support of this allegation is summarised in the witness statement of Mr Berry. He gave evidence today and confirmed the substance of what he said in his witness statement. His witness statement sets out what the defendant is alleged to have said to him. This is what Mr Berry says in his witness statement, at page 27 of the bundle:

“At about 25 past 4 in the afternoon on 6<sup>th</sup> April, I returned home to our house. With me in our car was my wife, Charlotte Berry, and our three-year old daughter, Amelia Berry. As I was reversing my car into a parking space outside the front of the house, I saw Daniel Carter walking over the grassed area that borders the car park. I could see that Daniel was waving his arms about and he was shouting something. It was only when I got out of the car that I could fully hear what Daniel was saying. I heard Daniel shout: ‘Your family is dead. I have been at court for the third time, I'm gonna get it sorted.’ This was repeated by him several times and was clearly aimed at us, as it was making reference to the civil injunction. There was also no other person in the street.”

- 10 He said, in the course of giving evidence today, that he could not recall exactly how many times these words were uttered by the defendant. But he said that he heard the defendant say them at least twice. He then goes on to say, in the antepenultimate paragraph of his witness statement, this:

“Those words caused my wife, Charlotte, to become extremely upset because she is completely at the end of her tether with it all. It also upset my daughter, Amelia. I could clearly see she was frightened by Daniel because she was gripping hold of Charlotte’s leg as we came into the house.”

- 11 Mr Berry, as I have said, can remember those words having been uttered twice. In his

statement, he says that they were mentioned on a number of occasions.

- 12 The defendant denies that that was what he said. He accepts that he said words to the effect: "I've been at court for the third time, I am going to get it sorted." However, he denies saying that "Your family is dead." He said that the words "I've been at court for the third, I am going to get it sorted" were said to a friend of his to whom he was talking on the telephone at the time; and that what he was saying to his friend was that he had been to court for the third time and he intended getting the matter sorted out. He says that Mr Berry is wrong about the comments having been directed at him and has misinterpreted what he was saying to his friend. The defendant maintains that Mr Berry has, to put it in Mr Singleton's words, "had it in" for the defendant for some time. The defendant indicated that Mr Berry had assaulted him in the past, and that he is determined to make life as difficult for the defendant as he possibly can.
- 13 The issues I have to determine in connection with this application are these: first, whether the allegation (and there is only the one allegation which is relied upon by the claimant) is covered by the terms of the injunction. I can deal with that point shortly. Plainly it is and it has not been suggested by the defendant that it is not. It is covered (I agree with Mr Singleton) under all three paragraphs of the injunction which I have read out. Second, whether the allegation made by the claimant against the defendant is made out; and third, if the allegation is made out, how I should sentence the defendant today.
- 14 Those then are the issues that I need to decide. It is right that I also briefly mention an issue that was raised in the morning when the case was opened to me. That was an

issue relating to the defendant's capacity. It is plain from the exchanges I had with the defendant and from everything that I have seen and heard, including the impressive bundle of documents which he produced about his qualifications, that he does not require the assistance of a litigation friend; he has capacity in relation to these proceedings.

15 It is also right that I record that the defendant has been assisted today by his McKenzie Friend, Helen Frances Trott. I owe a particular debt of gratitude to her because I know that she has advised the defendant in relation to all the issues which have arisen today and has been a calming influence on the defendant; and on his behalf, through the statement which she has read and the advice and assistance she has given him, she has raised every conceivable matter in support of the position advanced by the defendant to the court today.

16 It is for the claimant to prove that the allegation is made out. The standard of proof is the criminal standard of proof. In simple terms, it is necessary for me to be satisfied so that I am sure that the allegation made by the claimant against the defendant is made out.

17 I am satisfied to the required standard of proof that the allegation is made out. For the benefit of the defendant, it is right that I say that, in considering whether the allegation is made out, I have disregarded his past convictions and his past misconduct towards the Berry family. It is right that that was mentioned to me by way of background because without that background it would have been difficult for me to know what had happened in the past. But for the purpose of deciding whether the allegation is made out, I have disregarded what has happened in the past.

- 18 I have to approach the question of whether the allegation is made out on the basis of the evidence which I have heard today concerning what happened on 6<sup>th</sup> April 2016. I am satisfied that that allegation is made out. There is no substance in the assertion of the defendant that Mr Berry is intent on making the defendant's life as difficult as possible and intent – as he put it – on destroying it. I did not get that impression from the evidence which I heard Mr Berry give this afternoon.
- 19 There is no substance either in the assertion of the defendant that Mr Berry had assaulted him the past. Mr Berry gave a description of what had happened in the past when he had to restrain the defendant. He was not charged with any criminal offence and I cannot see how he could be said to have been guilty of anything from the account he gave of what had happened. Mr Singleton makes the point (and I accept that point) that one has to be careful here: it is not Mr Berry whose actions are being impugned by the claimant, it is the actions of the defendant; and, in deciding whether this court is satisfied that the allegation is made out, it is what the defendant is alleged to have done which the court is concerned with. Plainly what might have happened in the past with regard to whether some element of malice or ill-will is demonstrated is relevant, but I cannot see, on the evidence that I heard, that Mr Berry is guilty of anything.
- 20 The defendant accepts that he was talking to his friend and that he told him that he was going to sort matters out. However, he never said "Your family is dead". But if that is correct, he would not have needed to speak to his friend in a manner which could have been heard by Mr Berry and his family. His assertion that he was talking to



a friend and was misinterpreted is simply untrue, just as it is wholly untrue that Mr Berry and his family and friends have sought to extort some £30,000 from him, as he said in his statement which he read out to me.

- 21 The plain fact is that, incensed by the service of the injunction papers upon him, the defendant was determined to make a point. He was not going to have the court or Mr Berry (through the claimant) tell him how to behave. Just as soon as he saw the papers once they were served upon him, he decided to prove his point. He wanted to make it plain that he could do what he wanted, undeterred by how the court expected him to behave. He thereupon, I find to the required standard, said to Mr Berry, his wife and their daughter: "Your family is dead. I have been at court for the third time, I'm going to get this sorted." He said this not once but on at least another occasion. He uttered those words because he was intent on intimidating Mr Berry and his family, and that is precisely the effect that those words had upon them.

- 22 I therefore find the contempt proved.

#### **LATER**

- 23 I am therefore going to deal with the question of sentence. In the context of how I should sentence the defendant, I can take into account his past convictions and conduct. He was twice convicted of offences arising from his dispute with the Berry family. In Miss Parson's witness statement, she summarises the conduct leading to the grant of the injunction. It is plain to me, having considered what she has to say,

that the past conduct has been of an extremely serious nature. As I have said, the seriousness is summarised in Miss Parson's witness statement and it is necessary that I read paragraphs 16, 17 and 18 of her witness statement. Miss Parsons says that Mrs Berry told her that the racist behaviour on the part of the defendant which occurred in 2011 was mainly aimed at her eldest daughter who, as a result, attempted to commit suicide at the time.

"She [that is Mrs Berry] is worried that her youngest daughter, aged three, has now started to repeat the swear words she has overheard being used by the respondent and she has made comments about 'the man next door'."

24 Then finally this paragraph of her statement:

"The behaviour of the respondent is clearly having a devastating effect on the Berry family. Mrs Berry told me that the whole family is on tenterhooks waiting for the next incident because they know that, as soon as the respondent's parents go out, he will start his abuse and threats. She is trying to keep the family together but her daughter is suffering with depression and her husband is off work with stress. He told me that he feels that he cannot go to work and leave his family as he fears for their safety if there is no one there to protect them. He said that he wants to move, although he feels that his family will have been forced out of their home if they have to leave. Mrs Berry seemed less keen on moving as she said the children are settled and they have spent

a lot of money to improve their home.”

25 The terms of the injunction were breached just as soon as the papers were served upon the defendant. That is a further aggravating feature of this offence. In addition, this was an extremely serious breach; it amounted to a threat to kill. The breach was committed whilst the defendant was on licence. That is yet another aggravating feature of this offence. There is no remorse or regret on the part of the defendant for the way in which he has behaved, and none at all in relation to the effect that his behaviour has had on the Berry family. When he was told that Mr Berry’s eldest daughter had attempted to commit suicide as a result of his actions, his response was to say that he too was nearing committing suicide because of all the issues he had with the Berry family. Those then are the aggravating features.

26 The mitigating features are these. First, of course, it is right to say that the defendant does not have the benefit of a guilty plea. He sought to defend this allegation and ultimately this court found the allegation proved against him. Second, it is right that I make reference to the character witness from Miss Trott. I accept that the defendant has certain issues and these have, very properly and fairly and with very great skill, been articulated in the witness statement which Miss Trott provided and from which she read out this afternoon.

27 The third matter in mitigation is that the defendant says that he is not going back to the property. As against that, one has to take into account the fact that he went to live with his mother or went to visit his mother, whatever it was – whether he actually stayed there or stayed there during some of the time only – because he was thrown

out of his hostel accommodation.

28 Fourth, it is right to take into account also that there has been no repetition of this type of conduct. There have been no further breaches and, according to the evidence of Mr Berry, the defendant has not been seen at his mother's property.

29 Fifth, it is appropriate for me take into account that the defendant has spent five days on remand in custody. Sixth, the fact is that this was a single allegation. It was a serious allegation but, as I have said, it was a single allegation; and finally, the background of the defendant to which he makes mention. I take all of those matters into account.

30 The court has to be guided in this case by the guidelines issued by the Sentencing Guidelines Council (now the Sentencing Council) in relation to offences of breaches of an anti-social behaviour order or past offences of breaches of an anti-social behaviour order. The relevant guidelines are set out at page 9 of the definitive guidelines promulgated by the Sentencing Guidelines Council (as it then was). In my view, this breach falls between the most serious band - serious harassment, alarm or distress - and lesser degree of harassment, alarm or distress. It falls in between those two bands.

31 Taking into account all of the matters referred to, the aggravating factors and the mitigating factors, and taking specifically the effect that this breach has had upon the Berry family but taking into account also the fact that there has been no repetition and that this has been a one-off incident and hopefully will not be repeated, I am

convinced that this is an offence which crosses the custody threshold. I do not consider that it is appropriate for me to deal with the breach in any other way. I am therefore going to impose a custodial sentence against the defendant.

- 32 The question I have to decide is whether I should suspend any sentence of imprisonment that I impose. Taking into account all the mitigation, the sentence of imprisonment against the defendant will be one of six weeks' imprisonment. I do not consider that there are any circumstances which make it appropriate for me to suspend that sentence of imprisonment. Therefore the sentence will be a term of immediate imprisonment for a period of six weeks.

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