

St James's Road  
Kingston-upon-Thames  
Surrey KT1 2AD

Thursday, 13<sup>th</sup> October 2016

Before:

DISTRICT JUDGE JOHN SMART

BETWEEN :

LONDON BOROUGH OF SUTTON

Claimant

- and -

THOMAS KELMAN

Defendant

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Mr King (instructed by Batchelors Solicitors) appeared on behalf of the Claimant.

THE DEFENDANT appeared in Person.

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**J U D G M E N T**

(As approved by the Judge)

THE DISTRICT JUDGE:

- 1 Thomas Kelman, you have admitted breaking the terms of injunctions made against you on 9<sup>th</sup> June 2016 and 19<sup>th</sup> August 2016. The circumstances in which those injunctions were granted are as follows. The London Borough of Sutton brought proceedings for an injunction against you on 9<sup>th</sup> June 2016 based upon allegations of anti-social behaviour on your part while you were living at 6 Rookley Close, Sutton. This property had been let to Mr. Stephen Field in March 2016. Neighbours complained about extremely loud music and shouting and swearing of the worst sort coming from the property at various times of the day and night. Police were called on more than one occasion. There was evidence before the court that Stephen Field, older than you, had said that he needed help because you kept beating him up. Alcohol consumed by yourself and Mr. Field seems to have contributed to the repeated instances of noise nuisance experienced by your neighbours.
- 2 Officers of the London Borough of Sutton interviewed Mr. Field. At that point, he denied the complaints and said he was being victimised by the neighbours. But the London Borough of Sutton had concerns about Mr. Field, who was considered to be frail and vulnerable. His exact age is not the subject of evidence before the court. You told me, and I accept for the purposes of today's hearing, that he was born on 26<sup>th</sup> December 1960. You, though, were born on 19<sup>th</sup> September 1985 and are 32. He is 56. Police disclosure put in evidence by the London Borough of Sutton showed that Mr. Field had alleged, on 7<sup>th</sup> May 2016, that you had assaulted him and that he wanted to you leave the property.
- 3 The matter came before Deputy District Judge Waschkuhn and she made an order at a hearing which was convened without notice to you on 9<sup>th</sup> June 2016. A power of arrest was attached to each provision of the injunction which she granted. The order was that:

“1. In the event that Mr. Thomas Kelman is served with this order within the area of land outlined and hatched with red ink on the plan attached to this order (‘the area of exclusion’), then he must immediately leave the area of exclusion and is thereafter forbidden from entering that area.

2. In the event that the Defendant Mr. Thomas Kelman is served with this order in some other location, then he be forbidden from entering the area of exclusion.

The order went on to say that you were forbidden, whether by yourself or by instructing, encouraging or allowing any other person, from:

“3. Shouting at, swearing at or using abusive language towards Mr. Stephen Field of the Property or from seeking to contact Mr. Field in any way or for whatever reason.

4. Using or threatening to use violence against Mr. Stephen Field at the Property.

5. Shouting at, swearing at, using abusive language towards or seeking to contact in any way or for any reason whatsoever Debbie Callaghan of 14 Rookley Close or any other resident of 14 Rookley Close.

6. Using or threatening to use violence against Debbie Callaghan of 14 Rookley Close or any other resident of 14 Rookley Close.”

I should say that Debbie Callaghan had given evidence in support of the application.

- 4 You were personally served with the order by a process server on 9<sup>th</sup> June 2016. The case came back to court on 23<sup>rd</sup> June 2016, when you were represented by counsel who made an unsuccessful application to discharge the injunction before District Judge Gold. District Judge Gold allocated the case to the fast track and considered a witness statement which you had submitted, dated 20<sup>th</sup> June. He permitted further evidence to be served by the Claimant and yourself and a trial was to take place on 15<sup>th</sup> September 2016. There was a notice of hearing sent out on 27<sup>th</sup> June. You denied most of the allegations in your written evidence.
- 5 Following the hearing before District Judge Gold, there was evidence filed by the Claimant exhibiting diary sheets from a neighbour evidencing a threat overheard on 26<sup>th</sup> May 2016: “I’ll stab you in the neck, you cunt.” The evidence also indicated that Mr. Field had been moved into supported accommodation, but there was a fear on the part of the London Borough of Sutton that you might locate him and try to move in with him again. Mr. Field signed a short statement on 7<sup>th</sup> July 2016: “I don’t want Tom in my life anymore because he beats me up, he gets drunk. If I don’t give him drinks he gets aggressive and it all starts again. It’s a vicious circle.”
- 6 On 19<sup>th</sup> August 2016, you were arrested and brought before the court. There was a hearing before District Judge Mauger. The order made on that day recorded that you had been arrested on the day of the hearing pursuant to the power of arrest attached to the order of Deputy District Judge Waschkuhn. You admitted being present at the home of Mr. Stephen Field at the time of his arrest. The court declined to commit you for that breach. At that stage, the Claimant had indicated through counsel that a formal application to commit you would be made. That does not seem to have happened. You were not remanded in custody

on that occasion, but the order of the Deputy District Judge Waschkuhn of 9<sup>th</sup> June was varied to include a provision that: “(a) the Defendant must not communicate with Mr. Stephen Field, whether in person or by telephone, text message, e-mail, social media or any other means; (b) the Defendant must not go within 25 metres of Mr. Stephen Field’s address or any property where he knows or believes Mr. Stephen Field may be living.”

7 The trial fixed for September did not go ahead because the court stood it down. It was not afforded a priority listing by the court staff. The allegations that led to the injunctions being made have not been the subject of a trial.

8 On 20<sup>th</sup> September 2016, you were arrested and brought before this court, for a second time, on the following day, 21<sup>st</sup> September. District Judge Mauger remanded you to custody and listed the matter for 28<sup>th</sup> September. You did not appear on 28<sup>th</sup> September, but that was not your fault because the prison in which you were remanded in custody did not produce you. You had in fact been remanded in custody by the Croydon Magistrates’ Court, certain charges having been raised against you. In your absence, District Judge Mauger remanded you in custody until 5<sup>th</sup> October.

9 The case came back before me on 5<sup>th</sup> October 2016, at which point the allegations of breach were finally formulated. An opportunity for an adjournment was offered. Recognising that you had, so you told me, pleaded guilty and were awaiting sentencing by the Croydon Magistrates, you admitted the allegations made against you, which were as follows:

“1. On 19th September 2016:

(a) The Defendant attended at 33 Grove Lane, Coulsdon, Surrey (the property) at about 1 p.m. and banged on the side windows and again demanded to be let into the property, in breach of para.1(b) of the injunction dated 19<sup>th</sup> August 2016.

(b) The Defendant was abusive to Mr. Field, calling him ‘a fucking cunt’ in breach of sub-paras (3) and (4) of the order dated 9<sup>th</sup> June 2016 and para.1(a) of the order dated 19<sup>th</sup> August 2016.

(c) The Defendant returned to the property at 9.30 p.m. and banged on the kitchen window, demanding again to be let in, in breach of para.1(a) and (b) of the order dated 15<sup>th</sup> August 2016 and paras. 3 and 4 of the order dated 9<sup>th</sup> June 2016.

(d) The Defendant was abusive to Mr. Field, calling him ‘a cunt’ and ‘a wanker’, in breach of paras.3 and 4 of the order dated 9<sup>th</sup> June 2016 and para.1(a) of the order dated 19<sup>th</sup> August 2016;

(e) the police were called and, although the Defendant left before they attended, he returned to the property and caused damage to it by kicking in

the wooden side panel of the kitchen in breach of para.1(a) of the order of 19<sup>th</sup> August 2016 and in breach of paras.3 and 4 of the order dated 9<sup>th</sup> June 2016;

(f) The Defendant entered the property, shouted at Mr. Field, grabbed his phone and threw it against the wall in breach of paras.3 and 4 of the order dated 9<sup>th</sup> June 2016;

(g) The Defendant grabbed hold of Mr. Field and pushed him against the wall, in breach of paras.3 and 4 of the order dated 9<sup>th</sup> June 2016.

2. On 20th September 2016:

(a) The Defendant attended at the property and banged on the kitchen window in breach of para.1(b) of the order dated 19<sup>th</sup> August 2016.

(b) The Defendant was abusive to Mr. Field, calling him ‘a cunt’, in breach of paras.2 and 3 of the order dated 9<sup>th</sup> June 2016 and para.1(a) of the order dated 19<sup>th</sup> August 2016.”

- 10 In sentencing you, I do not lose sight of the fact that you admitted the breaches and I also must not lose sight of the fact that you were, I was told today, (inquiries having been made of your solicitor) sentenced for admitted harassment in relation to the period of 29<sup>th</sup> August to 1st September, for criminal damage committed on 19<sup>th</sup> September and for assault on 20<sup>th</sup> September. I was told that the sentence was one of 18 weeks custody suspended for 18 months, the sentences to be concurrent. There were certain other requirements of the sentence, including a prohibition requirement: not to contact Mr. Field; not to go to Grove Lane.
- 11 I have to sentence you for breach of the injunctions. Court orders have to be complied with. I have to sentence you to mark the court’s disapproval of your disobedience to the court’s orders. I have had regard to the Sentencing Guidelines Council’s sentence guidance for Breach of a Protective Order. I have also had regard to the decision of the Court of Appeal in *Slade v Slade* [2009] EWCA (Civ) 748. There, the Court of Appeal dealt with the difficulties that arise where the criminal courts sentence for offences which are breaches of injunctions. What was said at para.21 of the judgment of Wilson LJ, in the context of the Protection from Harassment Act legislation, was as follows:

“...the terminology of the subsections (7) and (8) reflects the true principle, namely that it is the conduct which is not twice punishable. Thus in my view we should not be misled by the words in [48] of *Lomas v Parle* which I have placed in italics in [19] above: the second court should not so much reflect ‘the prior sentence’ in its judgment as decline to sentence for such of the conduct as has already been the subject of punishment in the criminal court. It follows that, even if a civil judge were to regard the

punishment given by the criminal court for certain conduct as too lenient, it would be improper for him to use his power of committal in respect of that self-same conduct in order to top up the punishment to what he regards as a proper level. What he must do is to sentence only for such conduct as was not the subject of the criminal proceedings.”

12 This exercise not without its difficulty, as recognised in para.23 of the judgment:

“...No doubt the seriousness or otherwise the breach of the obligation to the civil court, whether undertaken or imposed by injunction, will in part be informed by what one might call its *context*, namely (for example) by whether it was the first breach or the last in a series of breaches, by the existence or otherwise of warnings of the consequences of a breach or further breaches and by the propinquity in time between the creation of the obligation and the breach. But how much further can the judge go into the circumstances or content of the breach without sentencing for the conduct for which sentence has already been passed? In the most general terms the judge must surely be entitled to assess the conduct’s gravity: for the graver the conduct, the more serious the contempt of the civil court. But, so it seems to me, any more profound assessment risks trespass upon the area for which sentence has already been passed. And, even when the breach is serious, the civil court must rigorously remind itself that, however problematical, its function is to sentence only for the fact of a serious contempt and not for the content of the serious contempt.”

13 So I bear in mind the conduct for which you were convicted on your own admission by the Magistrates’ Court and sentenced and that does not, so far as I can see, include all of the allegations of breach of the injunctions which you have admitted. The harassment to which you pleaded guilty related to an earlier period of time. You have been sentenced for the assault and criminal damage. What I have to bear in mind is the fact of your being in a location you should not have been in, the banging on windows demanding to be let in and the swearing, which I have already recorded.

14 As I say, I give you credit for admitting the allegations. I did not, though, sense that there was any real remorse on your part. I take into account that you seem to have found somewhere to live, you are sorting your life out and you have no need to go back to Mr. Field. However, there were aggravating features here. The fact that he was a vulnerable individual, who ended up moving, but that you continued to seek to see him out. There does not seem to be any glimmer of appreciation that your behaviour is upsetting to him. I have to bear in mind that today is not the first time that you have come before this court being arrested for breach of its orders. I think there is a severe risk of repetition.

- 15 What I am going to do, firstly, is to extend the duration of the injunctions so that they coincide with the 18 months for which you have received a suspended sentence by the Croydon Magistrates' Court. In my estimation that is 7<sup>th</sup> April 2018, you having been sentenced on 7<sup>th</sup> October 2016.
  - 16 Overall, in my judgment, only a custodial sentence is justified by the breaches which you have admitted and which have not been the subject of sentencing by the Croydon Magistrates' Court.
  - 17 Would you stand now. My sentence is that you be committed to prison for one month, but that, having taken into account all the circumstances of this case, I will nevertheless suspend the sentence on the basis that you do not commit any further breach of the injunctions until 7<sup>th</sup> April 2018, again the period coinciding with the period of suspension of the sentence by the Croydon Magistrates' Court.
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