

IN THE COUNTY COURT AT LEEDS

Case No. C74LS267

The Combined Court Centre
Oxford Row
Leeds

1st March 2017

Before

HIS HONOUR JUDGE SAFFMAN

LEEDS CITY COUNCIL

(Claimant)

-v-

JOHN McDONAGH

(Defendant)

APPROVED JUDGMENT

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LEEDS CITY COUNCIL -v- JOHN McDONAGH

1st March 2017

APPROVED JUDGMENT

JUDGE SAFFMAN:

1. An Injunction was made at the request of Leeds City Council against Mr. John McDonagh on the 21st of November 2016. It appears at page 5 of the bundle with which I have been supplied. The injunction included an order prohibiting Mr. McDonagh from using threatening or abusive words or gestures to any employee agent or contractor of Leeds City Council, or any Officer attached to Safer Leeds, which is an agency of Leeds City Council.
2. The matter before me relates to two allegations of breach of that injunction. The first, on the 12th December 2016, a matter of three weeks or so after the injunction was made, and a further alleged breach on the 16th January 2017.
3. The allegation of the 12th December relates to his alleged conduct to Louise Birtle and Steven Canavan, employees of the Council, and thus persons who were protected by the Injunction, who, at about 2pm that day and in pursuance of their duties as officers of the council, attended the site on which Mr McDonagh lives.
4. It is alleged that Mr. McDonagh, stormed towards them both when they were sitting in a vehicle clearly identifiable as one belonging to the council. He was very angry and was shouting and pointing his finger towards Ms. Birtle and Mr. Canavan, and he said, "Oi, you, you and you need to get off site, don't come back, I warned you what would happen".
5. Subsequently, when Mr. Canavan attempted to talk to a Mr. Michael Price, another resident on the site, it is alleged that Mr. McDonagh said to Ms Birtles and Mr Canavan, "Don't talk to Michael. I own Michael. Michael does what I say", and it is alleged that he went on to say, "You don't run the site", that is the Council does not run the site, "And you don't do anything for us" thereby suggesting that the Council does not do anything for the residents of

the site. Mr McDonagh is also alleged to have accused these two workers (or at least other council employees) of taking £20 bribes.

6. The evidence of Ms Birtle is that Mr McDonagh was clearly agitated. He was told by Ms. Birtle, to calm down, as there were children were present. It is not suggested that he was shouting but he was talking in a raised voice and he was manic and agitated and was speaking in an intimidating and aggressive way.
7. That went on, it is alleged, for about ten minutes, and then subsequently he started shouting at another resident of the site by the name of Heather, and said, "Don't speak to them", that is the Council workers, "They won't do anything for you, I run the site".
8. Mr. McDonagh denies that that incident occurred in the way described. He does not dispute that Ms. Birtle and Mr Canavan attended the site on the 12th December and accepts that there was a conversation between him and Mr Canavan, but he denies that it was in any way a hostile conversation, and he denies in fact that he spoke to Ms. Birtle at all.
9. He does, however, recognise that he might have said, on that occasion, something along the lines that the local authority employees take bribes, but that at all times he was calm and he was certainly not intimidating.
10. I have not heard any evidence from Mr. Canavan in support of Ms. Birtle's oral and written account, but Ms. Birtle's evidence was given in a straight forward manner and she was clear about what was said on the relevant day, and she was not moved in relation to her evidence during the course of her cross-examination or in her evidence that she perceived the remarks made and the manner in which they were made as abusive and intimidating.
11. In relation to the second allegation, 16th of January, the council employee alleged to have been the victim of further abusive and threatening comments by Mr McDonagh in breach of the injunction was Victoria Rafferty who visited the site on that date with Louise Birtle and a police officer, PC Stevens.

12. Her evidence is that on arrival at the site - in a Jeep marked with Leeds City Council's logo - Mr. McDonagh came out of his caravan, bare chested and wearing jogging bottoms, he describes them as pyjamas. The allegation is that he was shaking his fists and looking extremely agitated and began to shout, "I told her not to come on site again and she knows what will happen", the "her" referred to was understood by Ms. Rafferty to be Louise Birtle. He then walked off. That was the sum total, essentially, of that incident because the Council workers then left the site.
13. Subsequently Ms Rafferty says that back at her office she received a telephone call from Mr. McDonagh in which he said, "Tell that bitch", once again a reference to Ms. Birtle, "not to come on site. You are all stupid fucking idiots".
14. Mr. McDonagh does not dispute that Ms. Rafferty, Ms. Birtle and PC Stevens might have attended the site on the 16th of January. He seems to recall seeing a Jeep on that occasion although he disputes that it was at 10.40 which is Ms. Rafferty's evidence, but rather that it was at 8.30. He disputes that he uttered the words which have been alleged, but he does acknowledge that he shouted at the occupants of the vehicle to get off site. He appears to acknowledge that he was waving his hands around in order to emphasise that instruction. His contention is that he did not know who the occupants of the van were when he made those comments. He does not deny making a telephone call later but cannot remember doing so but he asserts that if he did he will not have been abusive.
15. Once again the evidence of Ms. Rafferty was brief but clear. She recollects clearly what was said, and once again she would not admit to the possibility that her recollection was in any way mistaken.
16. In considering whether there has been a breach of the terms of an injunction I have to be satisfied to the criminal standard so that I am sure that there has been a breach. It is not sufficient to take the view on the basis of the balance of probabilities. The onus is on the

Council in this case to provide sufficient evidence to enable me to be satisfied to the criminal standard. The defendant has to establish nothing.

17. Am I satisfied to the relevant standard in relation to the two offences? In coming to my conclusion, it seems to me to be right to take account of the fact that, albeit Mr. McDonagh denies that he was agitated on either occasion, he does have, it seems, some serious grievances in relation to the conduct of the local authority in their management of the site where he lives. It seems clear that he has a significant grudge against the local authority because, apart from anything else, he holds them responsible for the lack of progress in relation to, I think, his shed and making it more welcoming. Further, he holds the local authority responsible for the fact that his wife contracted pneumonia and his son broke one of his wrists. So there is clearly some animosity that he harbours to the local authority, despite his contentions that he has nothing against the local authority workers specifically. It seems to me that supports the contention that when council employees appear on site he is going to be less than calm.
18. In addition, the manner in which he gave he gave his evidenced today, suggested that he is and can be excitable. Even he acknowledged that when he was telling the occupants of the Jeep to get off site he was waving his arms about.
19. Further, it is clear that he seems to have assumed responsibility for the running of this site. He seems to see himself as a man with status, perhaps he is, but he has assumed the responsibility for the running of this site, albeit that that is a responsibility which has not been given to him by anybody other than himself. That would suggest also something of an officious attitude which also supports the contention that he may feel it is his right to forcefully require people to get off site if he wants them off site.
20. The fact that he is clearly officious is also evidenced by his concession that on the 16th of January he told the occupants of the Jeep to get off site without even knowing why they were

there or who they were visiting. It could conceivably have been somebody unrelated to the Council who was visiting one of his neighbours, that appears to have made no difference to him.

21. In addition, I have to say that I did find his evidence contradictory in some parts. At one point he said in relation to the incident on the 16th of January, "I realised who was in the Jeep and that I said, 'Get off my site' and waved my arms around". Subsequently, he said he did not realise who was in the Jeep when he told the occupants to get off site and that he only subsequently realised who it was.
22. His evidence, in short, was not in my view impressive, and the way that he gave it, in my view, also gave some insight into his approach to matters relating to the local authority and their conduct of the management of his site. It evidenced a dogmatic and confrontational approach.
23. On the other hand, I was impressed by the evidence of Ms. Rafferty and Ms. Birtle. As I have said, in both cases their evidence was relatively brief, but they were very clear about what had been said, and it seems to me that they have really no axe to grind in relation to that which would cause them to come to Court to specifically lie about these issues.
24. I have carefully considered the evidence and, for the reasons expressed, am entirely satisfied to the criminal standard, and am thus sure, that these allegations have been made out and I so find.
25. We now go to the second phase which is, question about what I do having made those findings. Mr. Tong, any observations on that?

(Later)

JUDGE SAFFMAN:

26. Having found proved these two allegations of breach of the injunction of the November 2016, I have to decide how to deal with that bearing in mind that the maximum sentence for contempt of Court is two years.
27. Aggravating features in relation to these breaches are that these are allegations against people who are just going about doing their job. One can understand how intimidating and upsetting it is for Council workers who are just trying to make a difference to be subject to these sort of remarks, and it is right that the Court should take account of the fact that it is wholly unacceptable that any workers, in particular Council workers dealing with what can be challenging situations, should have their work made even harder and more challenging by this sort of conduct.
28. Another aggravating feature it seems to me is the fact that the first breach as I find it took place a matter of three weeks or so after the Injunction was made.
29. On the other hand, in terms of mitigation, the contention of the Council workers is that they found Mr McDonagh intimidating but there is no real suggestion that they felt that their physical safety was at risk, and there is no indication that there was any violence threatened, other than the distressing allegation that Ms. Birtle was told that she was warned what would happen if she came back on site.
30. I also take account of the fact that there has to be a relationship of some description between Mr. McDonagh and the Council going forward, and it would be desirable that any orders I make do not interfere with the possibility of that being conducted in a more sensible and rational basis on the part of Mr. McDonagh.
31. Taking account of the aggravating features to which I have referred, it strikes me that it is appropriate for the imposition of a custodial sentence of 28 days. It is important for the Court to recognise the need to protect people going about their jobs, but it seems to me, in light of

the mitigating and other factors, that the justice of this case can be met if that custodial sentence is suspended.

32. Accordingly, I propose to make an order of 28 days imprisonment suspended until the expiration of the injunction which I think is 21st November 2017.
33. The effect of that, Mr. McDonagh, is that this prison sentence will not be activated. You will not have to go to prison as long as between now and 21st November 2017 there is no further repetition of any breach of the injunction. In other words, you do not threaten or abuse anybody who works for Leeds City Council within that time. Do you understand? Do you understand?

1 MR. McDONAGH: Respectfully, your Honour, yes. Have you got to do the job
2 properly?

3
4 JUDGE SAFFMAN: Pardon.

5
6 MR. McDONAGH: That is it?

7
8 JUDGE SAFFMAN: You will have a chance to speak to Ms. Bray, but the point I
9 am making is that if you come back - if there is a further breach, if there is a further breach
10 and the Court finds that you have breached this injunction again, you can be punished for that
11 and this 28 day prison sentence can also be activated. Do you understand?

12
13 MR. McDONAGH: Yes, your Honour. So they can come in and intimidate me again,
14 is that what you are saying, they are allowed to do it.

15
16 JUDGE SAFFMAN: No, no. I am not saying that anybody can come and intimidate
17 you. What I am saying is you cannot intimidate them. All right.
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