

IN THE COUNTY COURT AT WALSALL

Case No: 3CV00013

Courtroom No. 1

Bridge House
Bridge Street
Walsall
WS1 1JQ

Monday, 10th July 2017

Before:
HIS HONOUR JUDGE GREGORY

B E T W E E N:

BASCO BAKERIES LIMITED

and

MR A AHMED T/A WINDMILL BAKERIES

MR TUCKER appeared on behalf of the Applicant
MR KENNAD appeared on behalf of the Respondent

JUDGMENT
(Approved)

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HHJ GREGORY:

1. Akhlaque Ahmed has attended at this court today pursuant to an application to commit him to prison for contempt of court. That application was issued on 31 March of this year, on behalf of Bakers Basco Ltd. It relates to an injunction made as long ago as 19 February 2013 by District Judge Sanghera.
2. Today, Bakers Basco Ltd has been represented by counsel, Mr Tucker, and Mr Ahmed most effectively by counsel, Mr Kennad.
3. The injunction in this case is an unusual one in the context of the type of injunctions with which County Courts generally deal. This is, if I may so describe it, a business injunction designed to protect property belonging to the claimant in the circumstances described in the affidavit of Mr Gavin McSweeney[?], sworn on 30 March 2017.
4. Mr Ahmed is a businessman who owns and operates a bakery. In the past, he has done so as a sole trader. Currently he does so through a limited company, Windmill Bakery Ltd, of which he is the sole director and shareholder. It is, therefore, an incorporated representation of Mr Ahmed himself.
5. In order to pursue it, it is necessary for Mr Ahmed to make deliveries of bread, which his business bakes, to a variety of customers, including the Co-op store, I think, in Cannock. The bread is delivered on trays. Mr Ahmed's business owns a number of trays. However, from time to time it has utilised trays belonging to Bakers Basco Ltd, which are intended solely for the use of members of Bakers Basco Ltd. Trays belonging to those members, from time to time, came into the possession of Mr Ahmed's business because he receives deliveries from, amongst others, Hovis Ltd, which is a member of the group of bakeries in respect of which Bakers Basco Ltd deals with the supply and use of bread delivery trays. This may sound a little prosaic, but it is a serious business. One only has to pause for a moment to contemplate the scale of bakery businesses throughout the United Kingdom and the huge volume of trays that are needed to deliver product from the various bakeries to vast numbers of outlets throughout the country.
6. Bakers Basco Ltd has amongst its membership the largest national manufacturers and suppliers of bread products, including ABF Grain Products Ltd, who trade as Allied Bakers, Hovis Ltd, Fine Lady Bakeries, Roberts Bakery, and Warburtons.
7. Annually, wheeled dollies, which I understand to be delivery trays a number of feet high, connected together and resting upon wheels so that they can be pushed around, are lost,

misappropriated, and stolen to the value of several million pounds. It is therefore necessary for appropriate steps to be taken to protect the ownership of those wheeled dollies and the trays of Bakers Basco Ltd. People in the position of Mr Ahmed, who run what I might term independent bakeries, know very well that they should not be using those items which belong to other companies. They are easily identifiable by the design and colouring of them.

8. Baker Basco Ltd discovered over four years ago that Mr Ahmed was in the habit of using trollies and trays which it owned and for which it was responsible. It therefore sought and obtained an injunction to prevent him from doing so. The terms of that injunction, insofar as they are operative for today's purposes, are as follows:
9. The defendant is forbidden from utilising bread trays and wheeled dollies belonging to the claimant's membership for display, storage, conveying or transporting the defendant's projects without obtaining the claimant's expressed written authority. The defendant is forbidden from utilising such equipment belonging to the claimants, saved solely for the member's product, without obtaining the claimant's expressed written priority.
10. On a simple level, it is like one taxi driver using another taxi driver's taxi for his business, which he should not be doing.
11. The startling feature of this case is that it would have been so simple for Mr Ahmed to equip himself with enough dollies and trays at very modest cost, to avoid finding himself in this position, had he chosen to do so. I am told that he has now purchased a total of 500 baskets for a total of £2,500, which is a very modest outlay, particularly when one considers the cost of finding himself dragged before the court again and the risk of finding himself sent down the steps to prison.
12. What has happened in this case is as follows. After the injunction was obtained, it was breached on 25 March 2015. No penalty was applied in respect of that breach because the original order was not endorsed with a penal notice, so such a notice was added on 2 July. The order was personally served.
13. On 13 May 2016, the order was breached for a second time. That led to a committal hearing, with which I dealt on 22 August 2016. Mr Ahmed admitted two breaches on that occasion. The first was minimal, so I made no order in relation to it. The second was more substantial. I imposed a fine of £2,000 and ordered that he pay costs in relation to those hearings. I suspect I also gave Mr Ahmed a bit of a dressing down and warned him not to do it again, but I cannot actually remember.

14. Since then, there have been three further breaches: on 20 February 2017, when an unidentified number of baskets were being used to deliver bread to a Co-operative store; secondly, on 10 March 2017, when 23 baskets were seen to have been used to make a delivery to a Co-op store; third, on the following day, 11 March, when 81 baskets were discovered to be in use at Mr Ahmed's own premises. That breach came to light because he had invited representatives of Bakers Basco Ltd to inspect his premises to prove that he was not using their baskets. That invitation rather backfired in that fairly spectacular way.
15. Today, through counsel, Mr Ahmed has frankly admitted each of these three breaches. He has apologised unreservedly. I have no doubt that his apology is sincere, if only because I have no doubt that this is the last place that he wants to be.
16. The claimant seeks to recover £664.50 as damages for the cost of dealing with the repatriation of baskets on 10 and 11 March. That claim is not disputed. The claimant seeks to recover its costs and, again, it is not disputed that a cost order should be made. I have been provided with a schedule. The schedule is not disputed, save that Mr Kennad feels that it is a little bit high because of the cost of using a process server.
17. I have already indicated that I do not intend to send Mr Ahmed to prison. However, he must understand that I do not, nor any other court, make injunctions for fun. They have to be obeyed and ultimately, if a party cannot or will not so conduct himself as to ensure that they are obeyed, that party will find himself in jail. I take the view that jail is for criminals and Mr Ahmed is not a criminal, but an entirely respectable and, it seems, successful businessman. He should therefore be at liberty, earning his living, running his business, and employing those people fortunate enough to be employed by him.
18. However, if he puts me in the position again where he is in breach of this order, he will force my hand and I will have no choice but to implement a custodial sentence, albeit that that would be the last thing that I wish to do.
19. I take into account the admission and the apology. One of the two elements in dealing with injunctions which have been breached is the court's displeasure that its order be flouted; the second is to secure future compliance. I bear both of those matters in mind.
20. Stand up please, Mr Ahmed.
21. On the first two occasions only a few baskets were being used. On the third occasion, a lot more were being used. On that third occasion, the matter only came to light because you were trying to prove you were not using them, which is rather ironic. For each of those breaches I impose a fine of £1,000, making a total of £3,000.

22. In respect of each of those breaches there will also be a term of imprisonment of six weeks. That will be concurrent on each breach, which means that the total sentence is six weeks' imprisonment. That will be suspended upon condition that you comply with the terms of the injunction for the duration of the injunction. Do you understand that? This means that you will not go to prison, but if you breach the injunction again, you will be brought back to court and I will have to sentence you for that breach. I will have to impose an immediate sentence, plus this period of six weeks. Do you understand that?
23. There will be an award of damages of £664.50 and you will pay the claimant's costs, summarily assessed in the figure of £5,000. Costs and damages to be paid within 21 days.
24. Your straightforwardness and frankness with the court, as explained by Mr Kennad, is what has enabled me to suspend the sentence today. You understand that. I suggest you go and buy a lot more baskets, Mr Ahmed. Please ensure you never find yourself in this position again.
25. I give permission to the claimant to amend the claim form and particulars of the claim by adding Windmill Bakeries Ltd as a second defendant and I order that the order of 19 February 2013 be varied so as to read at paragraph 2, 'The first defendant and the second defendant are', and to vary paragraph 3 so as to read, 'The first defendant and the second defendant are'. That will suffice.

End of Judgment

Transcript from a recording by Ubiquis
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