

IN THE COUNTY COURT
AT BROMLEY

Case No: F01BR951

Court House, College Road,
Bromley, Kent. BR1 3PX.

Date: Thursday 31st October 2019
Start Time: 12.17 p.m. Finish Time: 12.26 p.m.

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Before:

DISTRICT JUDGE BROOKS

Between:

MOAT HOMES LIMITED

Claimant

- and -

(1) JESSICA COOK

(2) FRANKIE SCHOCK

Defendants

MR. SAVILL for the **Claimant**

The Defendants were not present or represented

JUDGMENT AND SENTENCING REMARKS

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DISTRICT JUDGE BROOKS:

1. I remind myself that the Defendants have pleaded guilty to breaching paragraph 1 of my order dated 20th September 2019. That order was served on the Defendants on 20th and 21st September 2019. Paragraph 1 of that order forbade the Defendants to go to or to enter the retirement scheme known as Fletchers Close. The admitted breach is the Defendants admit being found in Flat 33 Fletchers Close on 9th October, that property being a flat rented by the First Defendant's mother. On that day three police officers attended the property and were told on enquiry that no one other than the mother was in the property. The officers could strongly smell cannabis coming from the property. They entered and found the First Defendant sitting on a couch and the Second Defendant hiding behind the couch. They were both arrested.
2. When the Defendants pleaded guilty they informed me that they wanted to challenge the injunction that I had made and told me that the First Defendant's mother also supported that position. The mother actually attended today and spoke to the Claimant. I am informed that this is not in fact her position. She had no intention of giving evidence to assist the Defendants and did not want them back at her property.
3. Today I am considering what sentences to impose upon the Defendants. They have not attended despite the mother apparently going off to find them.
4. There are three objectives to be considered when sentencing. Firstly, punishment for breach of the Order. In this regard, sentencing must be proportionate to the seriousness of the offence. This is determined by assessing the culpability of the Defendants and the level of harm the breach

has caused, or was at risk of being caused. Secondly, to secure future compliance to court orders if possible, and thirdly, rehabilitation, if at all possible, of the Defendants.

5. I also take into account the Sentencing Guidelines concerning breaches of an Anti-Social Behaviour Order, which Guidelines took effect from 1st October 2018. The Guidelines provide a number of steps the court must take when sentencing in cases of this kind. The first matter I have to determine is the offence category by assessing the culpability and harm.
6. Culpability. The guidelines set out three levels, (a), (b) and (c). Level (a) very serious or persistent breach, level (b) deliberate breach falling between levels (a) and (c); level (c) minor breach or a breach just short of a reasonable excuse. In my judgment, the correct assessment of culpability is as follows: for the breach of going to and entering into the retirement scheme I assess the culpability at level (b) because they are aware of the order which had been served; I have already set that out in my judgment. The breach took place only a few weeks after it had been served.
7. I also take into account the antecedents of the Defendants, and there are a number of them, and I will just summarise without identifying which applies to either, because they, to be frank, have the same sort of offences: failing to attend hearings, failing to surrender to custody, committing offences while on bail, failing to comply with a Community Order, breaching a conditional discharge. There is a pattern of disregarding orders here.
8. Harm. I now assess the level of harm. I do this by weighing up all the factors in the case to determine the harm that has been caused or is at risk of being

caused. I have considered the original activity for which the order was imposed and the circumstances in which the breach arose. The Sentencing Guidelines again provide three categories of harm: category 1, the breach causes very serious harm or distress; the breach demonstrates a continuing risk of serious criminal and/or anti-social behaviour; category 2, cases falling between 1 and 3; category 3, the breach causes little or no harm, the breach demonstrated a continuing risk of minor criminal and/or anti-social behaviour.

9. The Claimant cannot make any submissions alleging that any particular harm has been caused. In my judgment, the correct assessment of the harm is as follows: for the breach in relation to harm it is category 3. I suspect the First Defendant's mother could have provided some assistance on this, but she has not returned to court, having initially attended but left to find the Defendants.
10. Having assessed culpability and harm the Sentencing Guidelines provide the court with a starting point for the sentence in the range of available sentences above and below that starting point. In this case I have assessed culpability at level (b) and harm at category (c). For this the Guidelines give me a starting point of 3(b) and a sentencing range of high Community Order to a 26 week custodial sentence.
11. I must also take into account any aggravating and mitigating factors that would suggest I should increase or decrease the sentence. I must also consider whether there are other factors which suggest the appropriate sentence falls outside of the sentencing range the Guidelines suggest. The Claimant argues that there is an aggravating factor here, and that is a flagrant breach of the order. I completely agree. The Defendants have not taken the opportunity to

obtain legal advice, despite being provided with the fact sheet, if I can call it that, by me when they attended last time, and also being told by me that they had the right to legal representation and Legal Aid. That was explained in some detail and they read the note in front of me and took the paper away. They were told to give it to their solicitor, because I explained to them there were difficulties sometimes getting Legal Aid in this quasi criminal/civil jurisdiction.

12. In addition, the Second Defendant also pointedly told me that she wanted to obtain legal advice. Initially when she was arrested she refused to come into court but I got her to calm down, come in, and explained what the procedure was. She made it clear she wished to seek legal advice. Despite that, nothing has been done; nothing has been served on the Claimant. There is no requirement to serve any evidence, but no contact has been made by solicitors either.
13. On the evidence, the only breach that I have is going in to Flat 33. I do have to give the Defendants credit for pleading guilty. I note that, despite the flagrant breach of my Order, I have no evidence of any harm being caused. I might have adopted a different approach had the First Defendant's mother been able to give evidence to the contrary, but she, unfortunately, is not here. I make no criticism of the Claimant for that.
14. If I am considering a custodial sentence I have to consider whether I should suspend that sentence. Suspending a sentence may help in meeting two of the objectives of sentencing: to secure future compliance with the court's order and to secure the Defendant's rehabilitation. I also note the remarks of Munby

LJ, as he then was, in *Re: K v Hancock(?)* where he said: “The court’s imperative objective is to ensure that the unacceptable behaviour has not been repeated. That aim can be more important than its duty to uphold the law, especially in a case involving a child. It may be clear, for example, from a psychiatric report, that putting a Defendant in prison will not change his future behaviour, whereas a suspension might maximise the incentive to behave.”

15. This is the first time the Defendants’ committal has been sought concerning this order. I am also mindful that the breaches are on the less serious side. Taking all matters into account it seems to me this is a case where there should be a custodial sentence but it should be suspended. I am going to impose a custodial sentence of two months suspended for 12 months.
