

IN THE COUNTY COURT AT OXFORD

Case No. F70OX017

St Aldates
Oxford
OX1 1TL

Monday, 10th February 2020

Before

HER HONOUR JUDGE MELISSA CLARKE

OXFORD CITY COUNCIL

- v -

HOWARD TUMMINGS

MR VICKERS (Solicitor) appeared on behalf of the CLAIMANT
MISS AUSTIN appeared on behalf of the DEFENDANT

WHOLE HEARING

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1 **Case called.**

2 JUDGE CLARKE: Thank you. So, I understand, Mr Vickers, there has been a measure of
3 some agreement between you.

4 MR VICKERS: There has, Your Honour, yes. Has Your Honour got a copy of the 12
5 alleged breaches?

6 JUDGE CLARKE: Yes, I do. Thank you.

7 MR VICKERS: The City Council would be content not to proceed or pursue numbers one
8 and 10 which are ones in relation to a noise nuisance caused by a doorbell being
9 pressed repeatedly. And also, in relation to the breaches three, five, six, there is no
10 pursuit to be made in relation to the cannabis smell emanating from the property.

11 JUDGE CLARKE: So, it is all noise?

12 MR VICKERS: All noise indeed, Your Honour. Yes.

13 JUDGE CLARKE: All right. The only other compound allegation is 11. What about
14 those allegations?

15 MR VICKERS: I think, Your Honour, that the noise nuisance in and of itself is sufficient
16 to deal with the breaches themselves.

17 JUDGE CLARKE: So, you are not pursuing the pole?

18 MR VICKERS: I wouldn't pursue that.

19 JUDGE CLARKE: All right. All right. So, is everyone happy then for me to put these to
20 Mr Tummings?

21 MISS AUSTIN: Your Honour, yes.

22 JUDGE CLARKE: All right, Mr Tummings. I understand that you are willing to admit to
23 a number of allegations of breach. I am going to put them to you. If you could just
24 say whether you admit them or you do not admit them, at the end of each.

25 MR VICKERS: Excuse me.

26 JUDGE CLARKE: The first is number two, that on 17 May 2019, you caused noise
27 nuisance by playing amplified music between the hours of 10:00 and 20:00 hours,
28 which could be heard outside the property. Do you admit that?

29 MR TUMMINGS: Yes.

30 JUDGE CLARKE: The next is that on 11 June 2019 between approximately 9:00pm and
31 11:00pm, the defendant caused noise nuisance by shouting and playing amplified
32 music at loud levels. Do you admit that?

33 MR TUMMINGS: Yes.

34 JUDGE CLARKE: The next is that on 24 June 2019 between approximately 6:00pm and
35 1:00am on 25 June 2019, the defendant caused noise nuisance by playing amplified

1 music and arguing with a guest, which could be heard outside of his property. Do
2 you accept that?

3 MR TUMMINGS: Yes.

4 JUDGE CLARK: The next is on 4 July 2019 between approximately 10:00pm and
5 midnight, you caused noise nuisance by playing amplified music, arguing with
6 guests and slamming doors and allowing the doorbell to be rung continuously for
7 two minutes, which could be heard outside his property.

8 MR VICKERS: I don't think we need to pursue that.

9 JUDGE CLARKE: All right, let me put that to you again. On 4 July 2019 between
10 approximately 10:00pm and midnight, you caused noise nuisance by playing
11 amplified music, arguing with guests and slamming doors, which could be heard
12 outside the property.

13 MR TUMMINGS: Yes.

14 JUDGE CLARKE: Yes. The next is that on 29 August 2019 between approximately
15 9:00pm and midnight, you caused noise nuisance by playing amplified music and
16 shouting at levels which could be heard outside your property. You have to answer
17 I'm afraid, Mr Tummings.

18 MR TUMMINGS: Yes.

19 JUDGE CLARKE: Yes, thank you. The next is that on 5 September 2019 between
20 approximately 7:00pm and 11:00pm, you caused noise nuisance by playing
21 amplified music and slamming doors at levels which could be heard outside the
22 property.

23 MR TUMMINGS: Yes.

24 JUDGE CLARKE: Yes. The next is on 10 September 2019 between approximately
25 5:00pm and 3:00am on 11 September 2019, you caused noise nuisance by playing
26 amplified music, slamming doors, shouting and yelling at levels which could be
27 heard outside the property.

28 MR TUMMINGS: Yes.

29 JUDGE CLARKE: Yes. The next is on 12 September 2019 between approximately
30 8:00pm and midnight, you caused noise nuisance by playing amplified music,
31 slamming doors, shouting at levels which could be heard outside your property.
32 Yes?

33 MR TUMMINGS: Yes.

34 JUDGE CLARKE: The next is on 27 September 2019 at approximately 3:00am, you
35 caused noise nuisance by allowing -

1 [Crosstalk]

2 MR VICKERS: Sorry, Your Honour, that's –

3 JUDGE CLARKE: Not doing that one, thank you. That is my fault. The next is on 3
4 October 2019 between approximately 4:00 in the morning and 11:30pm, you caused
5 noise nuisance by playing amplified music and shouting at levels which could be
6 heard outside your property. Yes?

7 MR TUMMINGS: Yes.

8 JUDGE CLARKE: Yes, and the last one is that on 4 October 2019 between approximately
9 2:00 in the afternoon and 10:00pm, you caused noise nuisance by playing amplified
10 music at levels which could be heard outside your property.

11 MR TUMMINGS: Yes.

12 JUDGE CLARKE: Yes. All right, thank you very much. Have a seat please, Mr
13 Tummings. Right, thank you.

14 MR VICKERS: Your Honour, on 3 May of last year, I think it was Your Honour who
15 made the order prohibiting Mr Tummings from making noise, causing noise
16 nuisance. That was served on 10 May and there have been ongoing breaches of that
17 order. It has been something that has caused Miss Maloney, who sits in court today,
18 significant distress, significant upset by the continued noise nuisance that has been
19 caused.

20 JUDGE CLARKE: Yes.

21 MR VICKERS: I don't know how much detail or if you wish me to open it in a –

22 JUDGE CLARKE: Well, I read the witness statements that came with the original
23 application for an injunction and I have read the two witness statements that the
24 council worker, whose name I have forgotten.

25 MR VICKERS: Mr Courtney.

26 JUDGE CLARKE: Thank you. Mr Courtney and Miss Maloney, so I do not feel that I
27 need much of an opening and I remember this slightly as well.

28 MR VICKERS: Of course. Your Honour, I don't know if you wish me to address you in
29 relation to the sentencing for the breach.

30 JUDGE CLARKE: Well, you can either address me now on that, or you can respond to
31 what I am no doubt going to hear from Miss Austin.

32 MR VICKERS: I'll wait for Miss Austin.

33 JUDGE CLARKE: All right, thank you.

34 MISS AUSTIN: Your Honour, Mr Tummings has accepted breaches in relation to making
35 a noise that could be heard outside his flat. To be fair to Mr Tummings, he accepts

1 playing loud music on all of these occasions. Some of the noise breaches that he
2 has admitted to are perhaps, or were perhaps beyond his direct control in the sense
3 that he had a guest and had an argument with the guest, and of course, my learned
4 friend has accepted that, for example, a doorbell was again something that is
5 beyond his control.

6 The only point we address you on is the difficulties that Mr Tummings has himself.
7 He is 57 years old; he will be 58 this year. And sadly, he does suffer with many
8 complex health issues, not just physical, but also mental health issues. Mr
9 Tummings suffers with schizophrenia with depression and anxiety. He was
10 sectioned and spent months at the Oxford Hospital. He takes an array of
11 medication. He also has a number of physical health problems. He suffered with
12 cancer two years ago. He had sarcoma and underwent treatment for about seven
13 months, he still attends Churchill Hospital. He has a metal plate in his leg which is
14 due to be removed, I think, within the next week or so. When he came to see me,
15 he brought a big box which was given to him by his nurse, who visits him on a
16 regular basis. He takes a minimum of 14 tablets a day. He is also, for the pain in
17 his leg, he is given morphine, which he can sometimes administer himself and that
18 explains, for example, sometimes when he doesn't hear a doorbell. So, he admits
19 the breaches, but also, he does explain that sometimes, some of the issues are
20 beyond his control.

21 He was born in Jamaica but moved to USA where he was effectively raised. He
22 met his now ex-wife in the US where they had children, but they moved back to
23 England because she was in fact from England. Unfortunately, some years ago they
24 got divorced and he has four children, ranging in age from 14 to 22. All of his
25 children live in Oxford and he does see them on a, as I said, relatively regular basis.
26 Most of his family still live in America, but he has a sister who lives in
27 Birmingham. His sister helps him out with some of his finances. Mr Tummings
28 worked most of his life, but the last few years, because of his health issues, he
29 hasn't been able to work. But, as I said, his sister helps him financially, but he is, at
30 the same time, in receipt of benefits.

31 As far as these proceedings are concerned, of course, Mr Tummings would accept
32 that an injunction was issued in May of last year and he also just admitted to Your
33 Honour that he had breached that injunction. Having spoken to my learned friend
34 last week, I think Oxford City Council accepts that the breaches have now stopped.
35 He has effectively stopped playing music. Your Honour, I think it is a little bit too

1 late, but what I am told is that he did not fully appreciate the consequences of
2 breaching such injunction. If he was to receive an immediate custodial sentence,
3 Your Honour, he would lose his accommodation and he would become street
4 homeless.

5 JUDGE CLARKE: I am not minded to give an immediate custodial sentence in this case.

6 MISS AUSTIN: I'm grateful. Mr Tummings also has a heart problem and he is, as I said,
7 scared to be on his own. He does have a girlfriend at the moment and he has
8 friends round Oxford and he spends most nights staying at his girlfriend's or
9 friends, so he doesn't spend that much time in the flat and he is effectively really
10 scared now, so he does not play music at all anymore when he is in the flat. His
11 sister bought him a very high-tech TV and he is not quite sure sometimes how to
12 disable certain things in relation to volume and even though, he doesn't actually
13 have to stop playing music altogether, if he was, for example, to be shown, I don't
14 know, by somebody how to disable. He has disabled bass now, so as I understand
15 it, I haven't listened to the recordings, that was the issue. Not that the music was so
16 loud, it was the underlying bass that could be heard. But if Your Honour is minded
17 to suspend the sentence, I don't think I need to go into much more detail, except to
18 say that he is sorry about these breaches, but it is something that he does not wish to
19 repeat and he does not certainly wish to attend court again.

20 JUDGE CLARKE: All right, thank you very much. Is there anything you want to add to
21 this?

22 MR VICKERS: Your Honour is no doubt aware that the guidance in relation to where this
23 should be sentenced. In relation to the guidance was pre-dated the criminal
24 behaviour order. So, it is in relation to anti-social behaviour order, but I would
25 certainly submit on behalf of the Council that the same principles apply and in
26 relation to the new sentencing guidelines for criminal behaviour orders.

27 JUDGE CLARKE: And where do you say that fits this?

28 MR VICKERS: I'd say it was culpability A because it is a persistent breach. We have got
29 breaches within a week of the order being served, going on to October and I would
30 say that in those circumstances, it is certainly culpability A. In relation to the harm,
31 it has caused Miss Maloney serious distress. She has become unwell as a result of
32 the lack of sleep, the constant noise and it is on that basis I would say that it may
33 well be at the lower end of Category 1, but I would certainly say it would fall into
34 Category 1. I know my learned friend and I are in disagreement in relation to that.
35 Obviously, Your Honour will determine where you feel that that would sit in

1 relation to the sentencing guidelines as set out. I don't know if I can assist you
2 further.

3 JUDGE CLARKE: Thank you very much.

4 All right, Mr Tummings, I will not make you stand for this. I have read the file, I
5 have read the witness statements in particular attached to the application for
6 committal dated 29 November 2019 and I have heard, as you have heard, from your
7 counsel and also from Oxford City Council. I am aware and I take into account
8 difficulties that you have had over the last few years, both in your physical health
9 dealing with cancer and also, with your mental health. I am sure the two are not
10 unconnected. I know that you are still in significant pain, resulting from your
11 physical ill-health and that you are on extensive medications.

12 I take into account and give you credit for the fact that although these are extensive
13 breaches, 10 in number and they do date from very shortly after the injunction order
14 was made, they are all breaches of paragraph three of the order, requiring you to
15 cease playing amplified music or causing nuisance noise, and there are no breaches
16 of what may be considered to be the more serious parts of the order which relate to
17 assaulting, threatening or intimidating or physically or verbally abusing Alison
18 Maloney, or causing her harassment, alarm and distress, other than by noise
19 nuisance. So, I do take that into account. Nonetheless, there are extensive
20 breaches; there are 10 breaches. They do cover a period from the middle of May to
21 the beginning of October and that is a time period where Miss Maloney and perhaps
22 some of your other neighbours, I do not know, have been having to deal with noise
23 nuisance against the background of a much longer period of nuisance and anti-
24 social behaviour caused by you, which caused the injunction to be sought by the
25 Council and granted by the court. You are not an unintelligent man. You knew
26 what this injunction required of you, because I explained it to you, and I explained
27 the implications of breaching it. The fact that there are so many breaches over a
28 long period, that does increase the culpability, i.e. the blameworthiness of yourself,
29 but also the harm that has been caused by it.

30 I have looked at the Sentencing Guidelines, they are not directly applicable because
31 this is not a criminal court; this is a civil court. They are helpful to guide me,
32 however. I do consider that the breaches pass the custody threshold, i.e. a custodial
33 sentence is the only one available to me which will properly reflect the seriousness
34 of the breaches, but as I indicated to your counsel, I am not minded to make a direct
35 custodial order and to send you to prison now. I do take into account and give you

1 credit for the fact that you have not caused any further nuisance since the beginning
2 of October and it is now the beginning of February. I understand that you are now
3 taking the injunction very seriously and you understand the potential risks
4 including, potentially, possession of the property. Because of that you appear to
5 have stopped making noise nuisance and in particular stopped listening to your
6 music loudly and I am sure that Miss Maloney is grateful for that.

7 It seems to me that although these are all different events and are not connected
8 with each other, they are all part of the same course of dealings, namely, listening to
9 loud music. I am effectively going to take them all together and sentence them
10 together as one. As I say, I take into account the very real difficulties that you have
11 had with your health and the fact that your behaviour has significantly improved
12 and I am going to pass a sentence for each breach, but to run concurrently, of nine
13 weeks custody for each, but suspended for a period of a year. Now, what that
14 means is that if you do not cause any further breaches in the next year, nothing
15 further will happen and that will be the end of the matter. But if you do breach the
16 injunction in any way in the next year and that is either admitted or proven, then
17 you will be brought back to court and your suspended sentence may be activated,
18 but also you will be sentenced for the further breach and it is unlikely to be as
19 generous a sentence the next time, as it was the first. Do you understand that?

20 MR TUMMINGS: Can I still play music?

21 JUDGE CLARKE: Sorry?

22 MR TUMMINGS: Can I still play music?

23 JUDGE CLARKE: You need to just act within the terms of the injunction. The injunction
24 prevents you from playing amplified music at a volume that can be heard outside
25 your property. I do not know whether you have headphones?

26 MR TUMMINGS: No, I tuned them.

27 JUDGE CLARKE: Mm-hmm?

28 MR TUMMINGS: I got it tuned up.

29 JUDGE CLARKE: You have got it tuned now? I cannot tell you how loud you can play
30 that music without breaching the injunction. Only you know what can be heard
31 outside your property and what cannot. If you can listen through headphones, that
32 would make everybody happy. If that is not possible, that is not possible but that
33 would be a sensible way perhaps of doing it. All right. So, that is, as I say, a nine
34 week order, suspended for a year. Is there anything further?

35 MR VICKERS: Excuse me, Your Honour.

1 **Discussion sotto voce.**

2 MR VICKERS: Your Honour, there's is an application for costs in relation to this. If you
3 forgive my back a moment.

4 JUDGE CLARKE: Yes.

5 **Discussion sotto voce.**

6 MR VICKERS: Your Honour, I think my instructions are it is difficult to quantify the
7 costs, so I won't make an application for an unspecified amount of costs that is not
8 supported by evidence.

9 JUDGE CLARKE: All right.

10 **Discussion sotto voce.**

11 JUDGE CLARKE: All right, Mr Tummings. Please ensure you comply with the
12 injunction.

13 MR TUMMINGS: Yes.

14 JUDGE CLARKE: It is very much in your best interests to do so. Thank you very much.

15 MR VICKERS: Thank you, Your Honour.

16 **End of hearing.**

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