

IN THE COUNTY COURT AT CENTRAL LONDON

Case No: F03EC355

Courtroom No. 51

Thomas More Building
Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 20th August 2020

Before:
HIS HONOUR JUDGE HELLMAN

B E T W E E N:

POPLAR HOUSING

and

MR MICHAEL MCHALE

MR FITZSIMONS appeared on behalf of the Applicant
The Respondent appeared in person

JUDGMENT
(Approved)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

HHJ HELLMAN:

1. I shall now give a ruling in relation to claim number F03EC355. On 20 August 2020 at the County Court at Central London, I, His Honour Judge Hellman, sentence you, Mr Michael McHale, to a suspended custodial sentence of six weeks for contempt of court. The sentence is suspended for 12 months. The basis of that sentence is as follows.
2. On 17 June 2020, I found that the allegations of breach of an antisocial behaviour injunction made against you on 16 October 2019 were proved. I gave a detailed judgment explaining my reasons for so finding, but it is helpful to recap some of the matters which I addressed in that judgment.
3. You are the tenant of a 1-bedroom flat in a block of flats at Dewberry Street, Poplar, in East London. The flats consist of social housing. Poplar HARCA is the owner and landlord of the block.
4. On 16 October 2019, DJ Stone made an injunction order (“the Injunction”) against you under section 1 of the Anti-Social Behaviour, Crime and Policing Act 2014. On 9 December 2019, DJ Stone ordered that the Injunction should continue in force until further order.
5. Paragraph 1 of the Injunction forbids you from: (1) engaging in or threatening to engage in conduct that causes or is likely to cause harassment, alarm or distress to any person or conduct capable of causing housing-related nuisance or annoyance to any person, and in particular, from conduct directed against Ms Anna Zazzler, Mr Simon Trafford or Mr Christopher Williams.
6. Paragraph 2 of the Injunction forbids you from causing nuisance and annoyance to any resident of Dewbury Street, Space Street or Bryant Place by: (a) shouting inside your flat, out of the window of your flat, or in the communal area of your building, whether the shouting is directed at a particular person or nobody in particular; (b) playing loud music; (c) slamming doors, banging and stomping; or (d) making any other excessive noise which could be heard outside of your flat.
7. The allegations which I found proved were 10 in number, but each allegation consisted of, in most cases, numerous examples of the particular conduct complained of in the allegation. The 10 allegations, which were set out in a schedule of allegations prepared by the Claimant, were as follows.
8. The first allegation was that you were shouting loudly out of your window on numerous occasions in breach of paragraphs 1 and 2 of the Injunction. These incidents occurred over the period 14 November 2019 through to 6 April 2020 and there were 26 such incidents.
9. The second allegation was that you were shouting and swearing loudly out of your window and banging on your window in breach of paragraphs 1 and 2 of the Injunction. That was just one incident on 24 December 2019.
10. The third allegation was that you were shouting loudly in the communal hallway of the block on numerous occasions in breach of paragraphs 1 and 2 of the Injunction. These incidents took place over the period 24 November 2019 through to 1 June 2020 and there were 55 such incidents

11. The fourth allegation was that you were shouting, swearing, slurring your words, laughing out loud, making a lot of noise and hitting metal bannisters on the stairs in the communal hallway of the block on numerous occasions in breach of paragraphs 1 and 2 of the Injunction. These incidents took place from 17 December 2019 through to 12 January 2020 and there were four such incidents.
12. The fifth allegation was that you were shouting and slamming doors, including your front door, on numerous occasions. These incidents took place over the period 23 November 2019 through to 26 January 2020 and there were two such incidents.
13. The sixth allegation was that you were shouting outside of the building in breach of paragraphs 1 or 2 of the injunction order. These incidents took place on 24 November 2019 and 6 April 2020 and there were two such incidents.
14. The seventh allegation was that you were on the landing going backwards and forwards into the property and shouting. Someone from outside told you to shut up, so you just shouted louder 'what's your problem?' This behaviour was in breach of paragraphs 1 and 2 of the Injunction. That was just one incident which took place on 26 December 2019.
15. The eighth allegation was that you were shouting loudly out of the window at the end of the corridor in the communal hallway of the block on numerous occasions. These incidents took place on 11 January 2020 through to 26 January 2020. There were three such incidents.
16. The ninth allegation is that you came out of the property and were shouting 'Polish' and slurring your words. You were also swearing in Polish saying 'kuźwa', which means 'shit'. This behaviour was in breach of paragraphs 1 and 2 of the Injunction. These incidents took place on 18 January 2020 and 28 January 2020 and were two in number.
17. The tenth allegation was that you were shouting in the communal hallway and slamming doors, which could be heard in another resident's property, and that you interrupted two work-related conference calls. The resident opened her front door. The defendant saw this, approached the resident, and said 'Polish'. This incident took place on the 28 January 2020.
18. In summary, these incidents involved behaving in a loud, drunken, and obnoxious manner on numerous occasions, sometimes shouting for hours on end at all times of the day and night. They have caused harassment, alarm, and distress to the residents of the property where you and they live.
19. Mr Williams made a witness statement in support of the committal proceeding in which he gave evidence of a number of these incidents. He stated:

'In all of these incidents, the Defendant appears to be drunk as he shouts very loudly and is slurring his words. The shouting is unbearable, and it doesn't matter what we do, he continues to keep shouting at various times of the day and night. We need a resolution to these issues because we've put up with them for far too long. I sometimes find it hard to sleep some nights because of the shouting and then I have to get up and go out to work, which I'm finding very hard through lack of sleep due to the shouting from the defendant'.
20. Ms Zazzler gave a witness statement in support of the committal application in which she stated:

‘On Sunday 12 January 2020, Michael, that is Mr McHale, started shouting at approximately 11am. Michael came out on the landing and then walked down the corridor and was kicking bannisters and was shouting. He was slurring his words and then he started to shout out of the corridor window. I was due to go to church on that day at 6pm. However, he was in and out of his property and hanging around on the landing shouting, so I missed going to church because I was too scared to leave my property as I would have had to walk past him. On this occasion, Michael continued shouting until very late in the evening, but I don’t recall what time he stopped shouting’.

21. She further stated that:

‘On Tuesday 28 January 2020 at approximately 8am, Michael was shouting again. I recall that I had a conference call with work and my colleague, who I was talking to at the time, remarked on the noise and asked what was going on because she could hear Michael shouting. I explained the situation that the man opposite me gets drunk and shouts all the time. I then took a second conference call at approximately 2pm but because Michael was shouting so loudly, I had to cut the call off’.

22. She continued:

‘The whole situation is awful, and I cannot sleep and seem to be on a sleep pattern similar to Michael’s, because I seem only to get some rest when he does because the rest of the time he’s shouting. I sometimes don’t go out because he is in and out of his property on the landing and he’s drunk and I’m very scared what he could do. I end up just staying at home. I need this to stop because it’s been going on for so long now and is affecting my day-to-day life. It’s stopping me doing things and is also affecting my work and my general well-being’.

23. Mr Trafford made a witness statement in support of the committal application where, having outlined number of incidents, he stated:

‘On all of these occasions the resident from 43 Dewbury Street, that is Mr McHale, is leaning out of his window shouting. I’ve submitted noise recordings of these offences to the claimant. These incidents of shouting cause me to wake up in the middle of the night and the early morning when he’s shouting and making it unable to relax. I’m housebound due to my illness and it’s very upsetting as I have to keep listening to this nearly every day and I need it to stop’.

24. These witness statements illustrate, Mr McHale, that you have made the lives of these three witnesses at least a misery through your thoughtless and antisocial behaviour.

25. I turn to the question of sentencing. As Mr Fitzsimons correctly advises me, the applicable guidelines prepared by the Sentencing Council are those concerned with breach of a Criminal Behaviour Order, which were effective from 1 October 2018. They are also applicable to breach of an Antisocial Behaviour Order.

26. I remind myself, however, that the guidelines apply to offences where there is a maximum of five years custody and the dispositions contained in the guidelines range from a fine to four years custody. The maximum sentence for contempt of court is two years imprisonment. I bear those different maximum sentences in mind and treat the guidelines as providing guidance only.

27. Step 1 in the guidelines is to determine the category of offence. I must first determine your culpability. I am satisfied that your behaviour falls within culpability Band B as it involves a deliberate breach falling between Band A, a very serious or persistent breach, and Band C, a minor breach or a breach just short of reasonable excuse.
28. I then have to look at the category of harm. I am satisfied that your behaviour falls within Category 2 as it falls between Category 1, where the breach causes very serious harm or distress or demonstrates a continuing risk of serious criminal and/or antisocial social behaviour, and Category 3, where the breach causes little or no harm or distress and the breach demonstrates a continuing risk of minor criminal and /or antisocial behaviour.
29. I then move on to step 2, the starting point and category range. The starting point for a Category 2 offence with a culpability level of Band B is 12 weeks custody and the maximum sentence falling within the guidelines would be one year's custody.
30. I then go on to consider any factors which would increase the seriousness of your behaviour or reflect personal mitigation. I.e. whether there are any aggravating factors or mitigating factors. I must be careful not to treat any factor which I have taken into account as determining the category of the offence, such as the way in which your behaviour has impacted on the residents of the property where you live, as an aggravating factor. That would be to count the same factor against you twice.
31. Mr Fitzsimons suggests that there is one aggravating factor and that is that these breaches commenced shortly after the Injunction was made. I agree that is an aggravating factor.
32. There is a mitigating factor in that I accept that you have an alcohol dependency and that this lies at the root of the breaches of the Injunction. You accept this and tell me that you are attempting to address this problem. I hope that these committal proceedings have given you a wake-up call.
33. In all circumstances, I am satisfied that the right period of imprisonment is six weeks.
34. I then go on to consider whether the sentence can properly be suspended. I have regard to the Practice Note in the decision of the Court of Appeal in *Hale v Tanner* [2000] 1 WLR 2377. I bear in mind the guidance given by Hale LJ, as she then was, in particular at page 2381 C – D:

‘(6) Suspension is possible in a much wider range of circumstances than it is in criminal cases. It does not have to be the exceptional case. Indeed, it is usually the first way of attempting to secure compliance with the court’s order.

(7) The length of the suspension requires separate consideration, although it is often appropriate for it to be linked to continued compliance with the order underlying the committal’.
35. In the present case, there is not a specific date at which the Injunction ends as it is only an interim injunction. The final hearing of the application for an injunction has yet to take place. In those circumstances, it is appropriate for me to suspend the order for committal for a fixed period and in my judgment the right period is 12 months. On the one hand that allows the suspended committal order to remain in place for sufficient time for it to have a real impact.

On the other hand, the length is not excessive. That concludes my judgment.

End of Judgment

Transcript from a recording by Ubiquis
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

Ubiquis hereby certify that the above is an accurate and complete record of the proceedings
or part thereof

This transcript has been approved by the judge.