

## TRANSCRIPT OF PROCEEDINGS

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Ref. G01BS868

### **IN THE BRISTOL CIVIL AND FAMILY JUSTICE CENTRE**

Sitting at Bristol Magistrates Court  
Marlborough Street  
Bristol

**Before HIS HONOUR JUDGE RALTON**

### **IN THE MATTER OF**

**LIVEWEST HOMES LTD (Claimant)**

**-v-**

**NADINE BENNETT (Defendant)**

**MR H MARRIOT appeared on behalf of the Claimant**  
**THE DEENDANT did not attend and was not represented**

### **JUDGMENT**

**29<sup>th</sup> JUNE 2021, 11.05-11.56**

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JUDGE RALTON:

1. LiveWest Homes Ltd is the claimant and is a well-known local provider of social housing. Nadine Bennett, the defendant, is a tenant of the claimant in respect of 10 Wellington Lane in Montpelier here in Bristol, which is a three-bed townhouse, further to the shorthold tenancy granted to Miss Bennett back in November 2019, on the usual terms and conditions or, to use the old language, covenants.
2. On 30 November of 2020 LiveWest, the claimant, made an application for injunction orders under the Anti-Social Behaviour, Crime and Policing Act 2014, which was supported by a statement of its housing officer, Miss Simpson, dated 27 November 2020.
3. The statements can be summarised as concern on the part of LiveWest that there have been a number of significant and serious domestic incidents between Miss Bennett and her partner, Sacha Walters, and also an undue number of visitors to the property, the suspicion being that drug use and/or supply was connected with the property.
4. There was an on notice hearing on 17 December 2020 before District Judge Watson. The defendant, Miss Bennett, attended that hearing and the district judge made an injunction order for one year restraining Miss Bennett from using or threatening violence to anyone in Wellington Lane, engaging in, as shorthand, anti-social behaviour in Wellington Lane and from allowing Sacha Walters to enter 10 Wellington Lane.
5. On 12 January 2021 LiveWest issued an application for the committal of Miss Bennett to prison on the ground that, in breach of the injunction order, it had evidence that she had caused, permitted, or allowed Sacha Walters to enter her home. The application was defective because it was made by N244 application notice in accordance with the old Part 81 of the Civil Procedures Rules, which by then had been wholly replaced by the new Part 81 Civil Procedure Rules and the new forms that are mandatory.
6. On 5 February 2021 the application was adjourned generally with liberty to restore until 5 May 2021. On 9 April 2021 LiveWest sought to amend its committal application and rely on an application which was in the proper form, N600, relying on 13 breaches, supported by affidavit evidence and witness statements, and that application was listed for a directions order on 8 June of this year and it came before Deputy District Judge Davies. Counsel for LiveWest attended that hearing and apparently Miss Bennett did not, and the hearing of the application was listed to take place on the first available date, with a time estimate of three hours.
7. On 24 June of this year it appears the court listed the matter for today, 29 June 2021. No doubt the court staff would not be aware of the sensitive time periods in committal

applications and the deputy district judge might perhaps have made a different listing order had time periods been thought of, but maybe the deputy district judge did not think the committal application would be listed so swiftly.

8. The concern, then, is this. Given that Miss Bennett is not present today, has she, nonetheless, had sufficient notice of the proceedings today so that she has been able to make a decision in her own mind whether or not to attend, knowing of the risks of this court proceeding in her absence.

9. Of course, under the new Part 81 various strict limits or periods are put in place under the rules. No time period is stipulated that must elapse between one hearing and the next or between application and hearing. Under the old Part 81 it was 14 days. I am told, and I have to accept in good faith because the certificate of service is not available to the court, that Miss Bennett was served personally with notice of the hearing last Saturday, which would be 26 June. That would give her less than two working days' notice of the hearing.

10. I am told, and there is evidence, of other reminders to Miss Bennett about the hearing. There was an email from the enforcement manager of LiveWest to Miss Bennett as of 25 June 2021, reminding of the hearing today. There was a text message that I am told was also sent on 25 June.

11. Apparently, there is some hearsay information that professionals are involved with Miss Bennett, namely one Sian Phillips and one Sophie Hanson, of making arrangements for the latter to meet with Miss Bennett at court.

12. No doubt the certificate of service can be filed with the court and there will need to be an undertaking to file the same with the court within a short period of time, and I am prepared to accept what counsel, Mr Marriott, tells me that the certificate of service still exists; it just simply has not made it to the court file. But the real question is whether or not Miss Bennett has had enough time.

13. It seems that Miss Bennett has chosen not to engage with the current committal application, even though it was made some months ago now. She did not attend the directions hearing. She has not filed any evidence. Of course, there is no obligation on her so to do. She could simply attend and require the claimant to be put to truth and she can always give oral evidence if she attended. All those options are available to her.

14. I have to say I am troubled about the fairly small amount of notice that Miss Bennett has been given of the hearing today and I am anxious to ensure that her human rights are not overtrodden.

15. The conclusion that I have reached is this. That the appropriate way forward is that I will proceed with the hearing and determine whether or not there has been a breach, but I will not proceed to sentence today, if, of course, any of the breaches are found proven, but let us be realistic here, the written evidence is not opposed. But I will list for sentencing on another date and as part of the order that I make today I will expressly draw attention to the defendant that she may apply, if she wishes to do so, to set aside the order that I make today, provided such application is properly made setting out why she did not attend the hearing today. The wording in the order can be perfected in due course.

(There followed witness evidence)

16. This is the extempore judgment of the court upon an application made by LiveWest Homes Ltd for the committal to prison of Miss Nadine Bennett for breaching an injunction order made by District Judge Watson on 17 December 2020 at a hearing at which Miss Bennett and LiveWest attended.

17. At the start of this hearing I provided some brief background to this case and addressed the question of whether the court should proceed in Miss Bennett's absence and I incorporate that judgment as part of this judgment.

18. The injunction order made by District Judge Watson was to last until 17 December 2021 at one minute to midnight, unless varied or revoked before then. There has been no variation or revocation.

19. The orders the judge made against Miss Bennett were as follows. She was forbidden, whether by herself or by instructing or encouraging any other person, from: (1) using or threatening violence to any person residing in Wellington Lane, Montpelier, Bristol, or anyone lawfully visiting Wellington Lane, Montpelier, Bristol; (2) Engaging in conduct which causes, or is likely to cause, nuisance, harassment, alarm or distress to any person residing in Wellington Lane, Montpelier, Bristol, or anyone lawfully visiting Wellington Lane, Montpelier, Bristol; (3) Allowing Sacher Walters to enter the property 10 Wellington Lane, Montpelier, Bristol.

20. As I have said previously, the first application to commit was made, effectively, on 12 January 2021, but, with the approval of the court, has since been overtaken by a proper application in the correct form, made on 7 April of this year, which results in the hearing today.

21. I remind myself immediately that the burden of proof which applies in this case is the criminal standard of proof. I must be satisfied that I am sure from the evidence given to me that each alleged breach occurred. It is important to note that there are 13 breaches. They all

concern the second or third injunction orders made Watson DJ and they fall into two classes. Class one is behaviour amounting to, for want of a better description, nuisance, and the other is conduct by which Miss Bennett allows Sacha Walters to enter 10 Wellington Lane.

22. The evidence before the court found as follows. There is a statement by Lisa Simpson, a housing officer employed by LiveWest Ltd, and that was made on 13 January 2021 in support of what I have described as the defective application to commit. There is then an affidavit in support of the correct application to commit, and that was sworn on 13 April 2021.

23. Miss Simpson has been affirmed. She has confirmed the contents of her statement and her affidavit and has also confirmed the information I was given earlier about service, or should I say Miss Bennett's attention being drawn to the fact of the hearing today. Miss Simpson exhibits, in particular, to her affidavit other evidence, including evidence from a PC Montague.

24. The other person who has come to court to give evidence is Miss Milka Wellesley-Davies and she lives near the defendant. She occupies her home with her husband and two children, aged 12 and 15.

25. I have considered carefully the question of whether there would be any reason for Miss Wellesley-Davies to want to colour her evidence or present her evidence by reason of some feud or vendetta with Miss Bennett, which is a situation not uncommon to these anti-social behaviour cases where it may be that the victim, in fact, is not behaving much better than the alleged perpetrator. But it seems to me that, other than being a neighbour, Miss Wellesley-Davies has no connection at all with Miss Bennett and Miss Wellesley-Davies' motivation for coming to court to give evidence is that she wants to be able to occupy her home with her family in peace and quiet, which is a perfectly commendable motivation.

26. They have given me their evidence. It has not been opposed, nor have I seen any evidence of any sort to contradict their evidence, and so far as PC Montague is concerned, I have seen his statements. He is not here to confirm his evidence, but his evidence, for the purposes of these proceedings, is very binary; the question being was Mr Walters inside number 10 Wellington Lane or not? Not the sort of thing that anyone is likely to be confused or mistaken about, given the very binary nature of it.

27. With that in mind, I look at the 13 alleged breaches. I have been helpfully given the schedule of those breaches with cross-references to the evidence on which LiveWest relies. Mr Marriott, who represents LiveWest and has been most helpful in his submissions, has

taken me through the 13 breaches. There are a number of occasions on which the breach relied on is Mr Walters being inside the property. The relevant witnesses know what Mr Walters looks like. I understand, for that matter, he has a distinctive recognisable voice as well. Therefore, all those breaches which cross-refer to paragraph 3 of the injunction order appear to me to be soundly made out on the evidence to the criminal standard.

28. The other bunch of allegations concern nuisance, and, of course, I caution myself that some individuals may protest about nuisance when the conduct complained of perhaps falls out short of what one might objectively regard as nuisance. However, loud noise, shouting, arguments and such like, particularly when such activity takes place in the early hours, is obviously anti-social and obviously amounts to a breach of clause 2 of the injunction order.

29. All of the nuisance evidence stems from Miss Wellesley-Davies, who, for the avoidance of doubt, also provides evidence in support of Mr Walters being in the property when he should not be. It all stems, as I say, from Miss Wellesley-Davies, at times corroborated by diary entries. I have no reason to suspect that Miss Wellesley-Davies is exaggerating or making it up and as far as I am concerned, she seems to me to be telling me how it was.

30. I am sure there is all manner of suspicion about the purpose of the various visits to the defendant's home by various individuals. I need not consider what the purpose of the visits were. The problem, as I said, is breach of the injunction order. Therefore, I consider myself satisfied that I am sure that all 13 breaches are made out.

31. The question, then, is what to do next. As has been pointed out on so many occasions, the County Court sentencing powers are very limited indeed and do not begin to match the much broader and more holistic powers that the Magistrates' Court has. The County Court's powers really are limited to financial penalties or to sending a person to prison for a period of up to two years, and, of course, a term of imprisonment being suspended on terms.

32. Because Miss Bennett is obviously at risk of being deprived of her liberty, either by way of a term of imprisonment or a suspended term of imprisonment, I think it is important, not least given the short amount of notice she has had about this hearing, that she is given the opportunity to attend court, to speak up in mitigation, to tell me anything that she wants to tell me, which should be taken by me into account in deciding what penalty, if any, to impose.

33. She, again, would have the opportunity to seek legal representation. That must be a matter for her choice, and, as I said at the outset of this hearing, it will also give her the opportunity, if she so wishes, to make a proper application, supported by evidence, to have

the orders that I have made today set aside. But, of course, that evidence must explain her non-attendance, and that is required, as I understand it, under the Civil Procedure Rules because that is explaining non-attendance. It is not responding to the allegations themselves.

34. So, I will list on the first available date after 21 days from today for sentence before myself, here at Bristol Magistrates' Court, time estimate one hour. There will need to be, for the avoidance of doubt, personal service of this order. There must be an expedited transcript of the judgment that I have given, and I think, other than reserving costs, for what it is worth, to deal with at the next hearing, there is nothing else.

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