

IN THE COUNTY COURT
AT BIRMINGHAM

Priory Courts, 33 Bull Street,
Birmingham, B4 6DS

Date: Monday 30th May 2022
Start Time: 11.10 Finish Time: 11.21

Page Count: 4
Word Count: 1,820
Number of Folios: 26

Before:

HIS HONOUR JUDGE MURCH

Between:

MIDLAND HEART LTD
- and -
S GREWAL

Claimant

Defendant

MR MARRIOTT for the **Claimant**
The Defendant was not present or represented

SENTENCING REMARKS

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HIS HONOUR JUDGE MURCH:

1. I am concerned now with the question of sentencing following the breaches of the injunction granted by HH Judge Wall in this court on 27 October 2020. There was a hearing before me on 25 April 2022 when I found four breaches proved. By the order I made that day, I gave notice to the defendant of today's hearing, his rights under CPR 81, including in particular, to have legal representation and to be present at the hearing. Importantly, if he did not attend the hearing I made clear that I would proceed in his absence. I am satisfied that he has had notice of today's hearing. I am now going to sentence him in relation to the four breaches.

2. To set the scene, the terms of the injunction made by Her Honour Judge Wall in the court on 27 October 2020 provided as follows:

1. The Defendant must:

1.1 Remove the silver BMW, registration Y182 NMR, belonging to the defendant from the disabled parking bay in the car park space located on the claimant's land at Priory Street Car Park, Dudley, West Midlands, DY1 1HA ("the Car Park"). The defendant must do so within 28 days of service of this order.

2. The Defendant (whether by himself or by instructing, encouraging or allowing any other person) shall not:

2.1 After 28 days of service of this order keep any unroadworthy, untaxed or uninsured vehicle in the car park referred to above.

3. The injunction order is to remain in force until further order.

Paragraph 5 reminded the defendant of his entitlement to apply to set aside the order no later than 7 days following service of it upon him. I have already dealt with in my earlier judgment the question of service of the injunction. At no stage has the defendant made an application to vary the terms of the injunction.

3. On 25 April 2022 I found a series of four breaches proved to the relevant standard. The four breaches which I found proved are as follows:

The first is that on 7 December 2020 at approximately 9.20 a.m. the defendant's silver BMW, registration Y182 NMR, ("the vehicle") was parked in the Priory Street Car Park, Dudley, West Midlands, DY1 1HA, ("the car park") in an unroadworthy condition. In doing so the defendant breached paragraph 2.1 of the injunction order. An application has been made today to amend that under the slip rule to record also that it is a breach of paragraphs 1 and 2.1 of the injunction. I amend it in those terms.

The second is that on 22 December 2020 at approximately 9.30 a.m. the vehicle was parked in the car park in an unroadworthy condition. In doing so the defendant breached paragraph 2.1 of the injunction order.

The third is that on 17 March 2021 the vehicle was parked in the car park in an unroadworthy condition. In doing so the defendant breached paragraph 2.1 of the injunction.

The fourth is that on 15 April 2021 at 12.24 p.m. the vehicle was parked in the car park in an unroadworthy condition. In doing so the defendant breached paragraph 2.1 of the injunction order.

Finally, the fifth is that on 3 February 2022 the vehicle was parked in the car park in an unroadworthy condition. In doing so, the defendant breached paragraph 2.1 of the injunction order.

I now have to sentence the defendant for breach of those provisions.

4. The context is that I have today, as forewarned to the defendant by the order I made at the last hearing, entertained an application to vary the terms of the injunction. Put briefly, the terms of the injunction, as varied, now give the defendant a further 21 days within which to remove the vehicle. If he fails to do so, it rehearses that the claimant has rights under the Torts (Interference with Goods) Act 1977 to remove the vehicle and dispose of it. Nonetheless, even if the claimant exercises that power, there have been a series of breaches which I must now consider as to sentence.
5. I remind myself of the warning given by Pitchford LJ in the case of *Solihull v Willoughby* [2013] EWCA Civ 699 that the purpose of sentencing in applications such as this is to punish the defendant, to ensure future compliance and to allow rehabilitation. The Lord Chief Justice in *Attorney General v McKeag and Barker* [2019] EWHC 241 QB also reminded courts and defendants that breach of a court order is a serious matter of itself and requires the sanction of the court to mark the importance of compliance with court orders.
6. I have regard to the Sentencing Council Guidelines for breach of Anti-social Behaviour Orders, reminding myself that they deal with the criminal courts' powers to impose five years' custody and various community orders. I do not have that range of penalties at my disposal. Furthermore, the maximum penalty I can impose is one of two years' imprisonment.
7. I think it is necessary to consider each breach separately because each breach is a separate and distinct matter.
8. Turning to the first breach, namely, 7 December 2020, I take the view that this was a Culpability B breach. It falls between a very serious and persistent breach but is greater than a minor breach in circumstances where clear action was required by the defendant and he did not take it. Counsel for the claimant is correct I think to draw to my attention that this is regarded as a Category 3 breach in circumstances where there is no evidence before the court that a specific tenant entitled to use the disabled parking space has been prevented from doing so, but nonetheless, the presence of a vehicle in an unroadworthy condition is an eyesore and a nuisance and therefore can be regarded properly as a Category 3 breach.
9. I turn to the category of sentencing for such a breach and take the view that a period of 14 days' imprisonment marks the requirement to make clear to the defendant the requirement to comply with court orders and falls within the guidelines which I have set out.

10. Turning then to the second breach on 22 December 2020, I take the view that in circumstances where there had already been a breach of the injunction this now is a very serious or persistent breach because the claimant has shown a continuation of the breach of the order. Nonetheless, it remains a Category 3 breach, but because this is now a very serious and persistent breach I impose a period of 21 days' imprisonment for that breach.
11. Turning to the third allegation on 17 March 2021, again I take the view that this is a very serious or persistent breach, but also falling within Category 3, and impose a further sentence of 21 days' imprisonment.
12. Turning to the fourth allegation on 15 April 2021, again this is now a very serious or persistent breach but one with Category 3 harm and again a sentence of 21 days is the appropriate term.
13. The final breach, 3 February 2022, is also is a very serious or persistent breach. By this stage it flows over a period approaching 2 years within which the defendant has not complied with the injunction. I think now a period of 28 days' imprisonment is the appropriate term, marking the requirement to comply with court orders.
14. I then have to consider whether there are any aggravating or mitigating factors to which I have not already had regard. I think I have already had regard to both aggravating and mitigating factors in relation to each breach and therefore do not make any adjustment either way. There is no guilty plea in this case and therefore no further reduction falls to be made. I need to ask myself though by applying the totality principle, when I stand back, what is the totality of the sentence which I should impose for these breaches? Given the maximum penalty I have imposed, I take the view that a period of 28 days' imprisonment reflects the totality principle in this case. I am satisfied, however, that I am able to suspend the operation of this order upon compliance with paragraph 2 of the order of Her Honour Judge Wall. That will prevent the defendant, if the claimant exercises its rights under the 1977 Act, from putting further cars on the land which breach the terms of Her Honour's injunction. Her Honour's injunction was indefinite in operation. I, however, will suspend the sentence for a period of one year. If there is further breach of the order it may be that fresh proceedings have to be commenced.
15. I shall invite Mr Mariott to draw up an order giving effect to the decision I have just reached and, in the usual way, it will set out the defendant's right within 21 days of today's hearing to appeal to the Court of Appeal without permission.
