

IN THE COUNTY COURT
AT BROMLEY

Case No: E00BR246/E00BR889

College Road, Bromley,
Kent. BR1 PX

Date: Thursday 20th June 2019
Start Time: 14.01 Finish Time: 14.57

Page Count: 15
Number of Folios: 133

Before:

DISTRICT JUDGE CRIDGE

Between:

**PHOENIX COMMUNITY HOUSING
ASSOCIATION (BELLINGHAM & DOWNHAM)**

LTD.

Claimant

- and -

TIMOTHY PATRICK O'KEEFE

Defendant

JANE HODGSON for the Claimant
ANDREW LOCKE for the Defendant

APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. Fax No: 020 7831 6864 DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

DISTRICT JUDGE CRIDGE:

1. This is my oral judgment concerning the Claimant, Phoenix Community Housing Association (Bellingham & Downham) Limited's applications to commit the Defendant, Mr. Timothy O'Keefe, to prison for nine alleged breaches of an anti-social behaviour injunction granted by District Judge Thomas on 16th February 2018. The applications are dated 20th August 2018 and 28th March 2019. The Claimant was represented by Jane Hodgson of counsel and the Defendant by counsel, Andrew Locke.
2. In coming to my decision I have considered the written evidence filed by both parties, the further documents I have been referred to in the court bundles, the oral evidence of the parties' witnesses at the hearings on 30th and 31st January and 11th April this year and the helpful and concise closing submissions of both counsel and their written skeletons provided to me during the course of these proceedings.
3. I mention at this point that the Claimant has also brought separate possession proceedings against the Defendant. Much of the evidence in that possession claim relies on the allegations raised by the Claimant in these committal proceedings. The parties have therefore agreed that I should make my findings to the criminal standard and, if necessary, to the civil standard. Once I have made those findings and dealt with any necessary further consideration of the committal applications I will then deal with the possession claim today if time allows.
4. I also mention again that there were nine alleged breaches of the injunction. One that is said to have taken place on 15th January 2019, and is an allegation that the Defendant spat close to the feet of Mr. McAlpine, did not form part of either committal application. This was because it had come before the court following the Defendant's arrest on 17th January 2019 for this alleged breach. Her Honour Judge Lazarus noted that the committal application had been listed for hearing on 30th and 31st January and so it seems that she presumed this alleged breach would be dealt with within the 28 days required by the rules. In the circumstances it was not. I have heard evidence from the Defendant and the Claimant's witnesses on the allegation and it cannot fairly be said that there is any surprise to the Defendant concerning it. However, procedurally the allegation was not 'dealt with' within the meaning of the rules, which in my judgment means disposed of during that 28 day period and it does not form part of either committal application. More importantly, the precise wording of the alleged breach has never been formally given to the Defendant, albeit I accept that the evidence concerning the breach has been. It seems to me that, given these are committal proceedings, the rules must be followed carefully. As there has been no application to vary the committal application to include this alleged breach and as it has not been dealt with during the 28 days required by CPR 81 it follows that I should decline to make any finding concerning the breach for the purposes of the committal hearing itself and for the committal applications. I will though make a finding about the allegation for the purposes of the possession claim.

The agreed background and procedural history

5. The Defendant is the Claimant's assured tenant in premises at 72 Broadmead, Bellingham, London SE6 3SD. He has been the Claimant's tenant since 3rd December 2007 following a housing stock transfer to the Claimant from the London

Borough of Lewisham on that date. I understand from the Defendant that he had been a Local Authority tenant of Lewisham for many years before that, so he has lived there for a very long time. The Defendant's home is a maisonette, comprising living spaces on the first floor with a private staircase leading down to the ground floor front door. Left adjacent to that front door when viewed from the outside is the front door to number 74 Broadmead, a ground floor flat owned and occupied by Gemma Hall and Stewart McAlpine, who live together as a couple there. A path leads from both front doors through a small front garden area to the street. The Defendant's maisonette therefore sits directly on top of Ms. Hall and Mr. McAlpine's flat. Ms. Hall and Mr. McAlpine are the Claimant's main witnesses in both the committal and the possession proceedings.

6. On 18th February 2018 the County Court granted an injunction with a power of arrest against the Defendant under the Anti-social Behaviour, Crime and Policing Act 2014. The Claimant had applied for the injunction following allegations of nuisance behaviour and following the Defendant's conviction for committing grievous bodily harm to a visitor to his property in July 2017 for which he was sentenced in January 2018 to 20 months imprisonment. I have been told that the Defendant attacked his visitor outside the front door of the Defendant's flat by cutting or slitting the visitor's throat. The Defendant was released from prison on a tag at or around the end of January 2018. He had been held in prison on remand before his conviction. I should make it clear now that I have disregarded those allegations and that conviction in reaching my findings on the alleged breaches set out in these committal applications.
7. The Defendant was personally served with the injunction on 8th March 2018. On 30th August 2018 the Claimant applied for the Defendant's committal to prison for seven alleged breaches of the injunction that were said to have taken place between 4th May and 19th August 2018. A further committal application was made by the Claimant in March 2019 for an alleged breach said to have occurred on 27th February 2019. It is these two committal applications that I am now giving judgment on.
8. The Defendant was arrested on 19th August 2018, 17th January 2019 and 27th February 2019 for alleged breaches of the injunction. On the first two occasions the Defendant was released by the court without bail conditions being imposed. On the third the Defendant was released by me on bail, subject to conditions which are not relevant to my decision today. This committal hearing has taken place over three days, on 30th and 31st January and on 11th April this year. On 31st January it became apparent that there was a need to recall all witnesses following an issue concerning the positioning of CCTV cameras installed by Mr. McAlpine on the outside of his and Ms Hall's ground floor flat. I gave additional directions for the filing of evidence by Ms. Hall and Mr. McAlpine. They both and the Defendant then gave further evidence at the hearing on 11th April. The application was then adjourned ultimately to today for me to have time at court to consider and give this oral judgment.
9. I turn now to the injunction itself. Simply put, the court has made something of a dog's dinner in drawing it up. Paragraphs 1 to 3 of the injunction were incorrectly drawn when it was first made in February 2018, although paragraphs 4 and 5 were correctly drawn. An attempt was made to correct it under the slip rule on 23rd October 2018 but that attempted correction was once again wrongly drawn by the court. The injunction was finally properly corrected by my order of 19th February 2019. An affidavit of service dated 16th March 2019 of Ken Donovan states that the

Defendant was personally served with the corrected injunction and power of arrest on 15th March 2019. All eight of the alleged breaches predate service of the corrected injunction.

10. It was argued by the Defendant's counsel at the start of the hearing before me on 30th January 2019 that the original injunction was unenforceable because its meaning was not properly clear. I held that the first three paragraphs were themselves unenforceable but that paragraphs 4 and 5, when read with the opening wording of the injunction and the categories of persons listed in paragraph 1, were enforceable and could be relied upon by the Claimant. My ruling applies to all eight alleged breaches, including that contained within the March 2019 committal application.
11. For the purposes of my judgment then the injunction was as follows: "The Defendant, Mr. Timothy Patrick O'Keefe, is forbidden, whether by himself or by instructing or encouraging or permitted" (and that is the actual wording drawn in the order) "any other person from" and then paragraph 4 states "communicating or attempting to communicate with Ms. Gemma Hall and/or Mr. Stewart McAlpine or any household member of or any visitors to, 74 Broadmead, Bellingham, SE6 3SD"; and, paragraph 5 "engaging in conduct causing, or likely to cause a nuisance or annoyance to any person in any of the categories set out in paragraph 1." The categories of persons set out in paragraph 1 of the injunction include "any person with a right of whatever description to reside in or occupy any part of Broadmead, Bellingham, SE6 3SD or its locality" and so it included Ms. Hall and Mr. McAlpine as the Defendant's immediate neighbours.
12. In closing submissions the Defendant argued that even these parts of the injunction are unenforceable for being ambiguous and I was referred to and have considered the passages in 'Arlidge on contempt' about this. Mr. Locke said that the wording of paragraph 5 in particular was too wide and so was defective. The wording did not enable the Defendant to know in advance where the line was which, if his behaviour went beyond it, would mean that he was in breach of the injunction.
13. I disagree. In my judgment, the wording is plain and clear to understand. I also note the words of section 2(1) of the Anti-social Behaviour, Crime and Policing Act 2014 - the Act under which this injunction was granted. That section states this: "In this part, 'anti-social behaviour' means: (a) conduct that has caused or is likely to cause harassment, alarm or distress to any person; (b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or (c) conduct capable of causing housing-related nuisance or annoyance to any person." I see little practical difference between the words adopted by Parliament in defining anti-social behaviour and the wording in the injunction. I note in particular that Parliament has used the words "conduct that has caused or is likely to cause" and compare these to the words in paragraph 5 of the injunction "engaging in conduct causing or likely to cause a nuisance" and so I find that the wording in paragraphs 4 and 5 of the injunction is clear and the injunction is enforceable, as I have previously held.
14. Turning to the burden of proof and the analysis of the evidence I should briefly mention now that it is for the Claimant to prove the allegations to the criminal standard and I have accordingly approached my judgment on that basis. For the avoidance of doubt, where in my judgment I have made findings of fact I have made

them on the basis that I am sure beyond reasonable doubt. The only exception, as will become apparent towards the end of my judgment, relates to the allegation of 15th January 2019 which I have considered on the civil standard. I also remind myself of the Lucas direction in the case of *Regina v Lucas* [1981] QB 720, the principle that, if a witness has lied about one matter it does not follow that he has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure. I have also reminded myself that the demeanour of a witness when giving evidence is not of itself determinative of whether or not their evidence is true.

15. Turning to the allegations themselves, they are as follows. The first allegation is that on 4th May 2018 at around 6.30 p.m. the Defendant breached paragraph 5 of the injunction order. His neighbour, Ms. Gemma Hall, returned to her property and closed her front door. As she did this the Defendant came down the stairs and slammed his front door several times. He then began banging on the wall with what sounded like a hammer. For the next few hours he could be heard stumbling around the property loudly and it sounded like he was continuously banging into things.
16. The second allegation is also on 4th May at around 9 p.m. the Defendant breached paragraphs 4 and 5 of the injunction order when his neighbour, Ms. Gemma Hall and her visitor were outside of her property. He went to the window above them and began shouting out of the window. He was repeatedly shouting phrases like: “Yeah, suck it good Perry” and “yeah, I love it when you put your finger up my bum; yeah, lick the rim.” He then appeared to be pretending to receive oral sex. As far as his neighbour was aware there was no one else in the property. The Defendant was slurring whilst shouting and manically laughed a few times.
17. The third allegation is that on 5th May 2018 the Defendant breached paragraph 5 of the injunction order by staring at his neighbour, Ms. Gemma Hall, from the window of his property whilst she was putting items in her car.
18. The fourth allegation is that on 18th May from around 11 p.m. until midnight the Defendant breached paragraph 5 of the injunction order by shouting in his property with at least one other woman and both he and the other woman were stomping around the property and up and down the stairwell. This continued until around 2 a.m. The woman was heard saying: “Get your keys out and get us in quick; he saw you earlier.”
19. The fifth allegation is that on 22nd May 2018 at around 1.47 a.m. the Defendant breached paragraph 5 of the injunction order as he was having a loud conversation with a woman outside the front door of his property. The woman was shouting so loudly that it woke neighbouring residents’ dogs who began barking. He then let the woman into the property and proceeded to stomp around, to shout and laugh manically until around 3.30 a.m.
20. The sixth allegation is that on 21st June 2018 at around 8.30 p.m. the Defendant breached paragraphs 4 and 5 of the injunction order and when his neighbour Ms. Gemma Hall returned to her property at 74 Broadmead, Bellingham, SE6 3SD, he began walking towards her as she got out of her car. As he got to her car he spat loudly twice on the floor next to her car and then started shouting: “Dirty, dirty

arsehole” at her. He then turned around and walked up the pathway towards the front doors of both 72 and 74 Broadmead, continuing to shout: “Dirty, dirty arsehole”.

21. The seventh allegation is that on 19th August 2018 at approximately 16.45 p.m. he breached paragraphs 4 and 5 of the injunction order when his neighbour, Mr. Stewart McAlpine, was returning home to his property. As Mr. McAlpine was walking up the pathway the Defendant was exiting the pathway and there are approximately eight feet surrounding Mr. McAlpine and the Defendant to walk through. The Defendant then proceeded to walk diagonally across the pathway towards Mr. McAlpine and stopped just short of his body and stared at him directly in the eye approximately about an inch away from his face. The Defendant appeared that he was about to shoulder barge Mr. McAlpine but stopped just before doing so. The Defendant then began to aggressively and incoherently mumble, ending with a venomous “you’re a fucking fool”. At this point Mr. McAlpine stopped and asked the Defendant to repeat himself, to which the Defendant replied, shouting: “You’re a fucking fool”. The Defendant was then arrested for this incident.
22. The eighth and final allegation is that on 27th February 2019 the Defendant breached paragraphs 4 and 5 of the injunction order. He was walking up and down the communal pathway when he saw his neighbour, Mr. Stewart McAlpine, stood out beside his bins. The Defendant started laughing at Mr. McAlpine and when the Defendant got next to him the Defendant called him “a fucking idiot” and said: “What are you going to do, arrest me?” Once the Defendant got to his front door he shouted: “I’m going to fucking kill the cunt” and this was aimed at Mr. McAlpine. When the Defendant went inside his property he was stomping on the floor. The police were called to this incident.

My assessment of the witnesses

23. The Claimant relied on the evidence of Gemma Hall and Stewart McAlpine to prove these eight breaches. Ms. Hall provided three affidavits and Mr. McAlpine four. The Defendant was the only witness who was called to give live evidence for the defence, having himself provided three affidavits, and I will now give my assessment of those witnesses and their credibility.
24. As I have mentioned, there was an issue concerning CCTV cameras installed by Mr. McAlpine on the outside of his and Ms. Hall’s ground floor flat. It was one of the main issues the Defendant relied on to question Mr. McAlpine’s and Ms. Hall’s credibility. I have considered the Defendant’s points carefully and now comment on those I believe to be the most significant and their effect on credibility.
25. Ms. Hall and Mr. McAlpine have pet cats. They told me that at around the time they moved into their flat there was a spate of press reports about cats being killed in the area, dubbed the “Croydon cat killer”. Their evidence to me was that their local animal rescue centre advised them to install the CCTV to deter the cat killer, which I personally recall from news reports later turned out in fact to be a fox. They, Mr. McAlpine and Ms. Hall, both told me its installation had nothing to do with the Defendant. In his third affidavit Mr. McAlpine exhibited a receipt from the online retailer ‘Amazon’ showing that he had purchased the CCTV and a separate hard drive on 29th November 2017, telling me that he had then installed the cameras at some point in December 2017.

26. In their live evidence in January both Ms. Hall and Mr. McAlpine told me they had never gotten the CCTV to record footage. Ms. Hall said that she was not technically minded and left all of this to Mr. McAlpine, that her understanding was that the CCTV could live stream footage to a TV or computer monitor but that Mr. McAlpine had been unable to get it to record. Mr. McAlpine explained this to me in more detail, saying that he had bought what turned out to be an incompatible hard drive for the CCTV to record to. He told me he had installed two CCTV cameras so that one pointed at the entrance to the front garden and the second just at their front garden itself and that they did not point onto the street. Both Ms. Hall and Mr. McAlpine were insistent that they had never been able to get the CCTV to record any footage and Mr. McAlpine said that as the intention had only ever been to deter the Croydon cat killer that they just left the cameras up as a deterrent.
27. On the second day of hearing, after I had finished with Ms. Hall and Mr. McAlpine's evidence, the Defendant said that the cameras did not point in the directions that Mr. McAlpine had said they did and that at least one could capture the footpath that leads from the street to the front doors of the Defendant's flat and the Hall/McAlpine flat where some of the allegations are said to have taken place. It also transpired that Ms. Hall had on 22nd May 2018 emailed the Claimant about an incident that happened early that morning caused by a visitor to the Defendant's flat shouting by the Defendant's front door. At the end of her email to the Claimant Ms. Hall said this: "I'm not sure if this is helpful or not/can be used, but we did set up CCTV as Tim was released which should have recorded the late night return and guest to the property." The Defendant said this all, amongst other things, seriously undermines Ms. Hall's and Mr. McAlpine's credibility.
28. When cross-examined about these issues on the third day of hearing in April 2019 it was put to Ms. Hall and Mr. McAlpine that their own CCTV cameras did record and that the only reason the court did not have any CCTV footage from these cameras was because it would have shown that none of the allegations that are said to have taken place at or near the two flats' front doors ever happened. Both Ms. Hall and Mr. McAlpine denied this to be the case. When cross-examined at the hearing in April 2019 Ms. Hall said again that she was not at all technically minded. She told me again that they had only installed the CCTV because of the cat killer. She said that: "As far as I'm aware from Stewart" i.e. Mr. McAlpine "it has never worked and never recorded. If we'd had recordings we'd have looked at them and submitted them." Of the statement in her email that "we did set up CCTV as Tim was released" Ms. Hall explained that what she wrote meant not that CCTV was set up because the Defendant was released from prison, rather, it meant the CCTV had been set up around the time the Defendant had been released. Ms. Hall told me that at the time she had sent the email she had assumed the CCTV was recording. She said that she did not think she and Mr. McAlpine had spoken about the CCTV as they had got it not because of the Defendant but because of the cat killer.
29. Mr. McAlpine was also cross-examined on this issue in the April hearing. He did not accept Mr. Locke's contention that Ms. Hall's email showed they had installed the CCTV because of the Defendant's behaviour. Mr. McAlpine referred me to the November 2017 Amazon receipt for the CCTV and hard drive. He also referred me to an Amazon returns receipt showing that the hard drive was sent back by him to Amazon on 9th January 2018. Mr. McAlpine also told me that they did not hear that

the Defendant was being released until some time at the end of January 2018. He said that as the Defendant had been on remand and then later sentenced to 20 months imprisonment following the July 2017 assault and as the Claimant had told them that they would look to obtain a possession order and evict the Defendant whilst he was serving his sentence that neither he nor Ms. Hall had expected to see the Defendant again and that he had made the CCTV purchase at the end of November 2017 at a time when the Defendant was on remand in prison and when he was expecting the Claimant to be seeking his eviction.

30. I watched both Ms. Hall and Mr. McAlpine carefully when they were being cross-examined. The cross-examination at the April hearing was in particular a very professional, careful and concerted attack by Mr. Locke on both of these witnesses' accounts. It is also important to note that neither Ms. Hall nor Mr. McAlpine were in court to hear the other give evidence before they gave their own evidence. Despite all of this, I found that both Ms. Hall and Mr. McAlpine did not waver from their main points: the CCTV was not installed because of the Defendant and it had never recorded. I acknowledge that, on the face of it, Ms. Hall's email of 22nd May 2018 is at odds with that position. However, I accept her explanation for this, namely, that this was a wrong assumption by her, in part because she had never really learned about the CCTV and had left it to Mr. McAlpine to deal with. In her words, she was "not technical". At no point in cross-examination did Ms. Hall appear to be flustered or unable to answer. I found her to be calm in her responses and nothing in her manner or her written or spoken words has led me to conclude that the CCTV cameras ever did properly function.
31. The same applies to Mr. McAlpine. I found him to be generally measured in his responses and unshaken in his evidence. Mr. Locke for the Defendant spent some time highlighting differences between Mr. McAlpine's evidence in January and in April on the CCTV. Mr. McAlpine explained that difference very simply and, in my judgment, entirely credibly. He said that at the hearing in January he had not expected to be asked about the CCTV cameras. They had not formed part of his evidence and he had given them little or no thought really since around the time of their installation a year or so before that morning in court. When he had been asked about the CCTV in January he had done his best to recollect when they had been installed and why they had never worked properly. Come the hearing in April he told me he had been able to review his Amazon purchase records and take the time to more properly recall what and when things had happened. I accept this and I was impressed by his command of the factual matrix about the CCTV during the cross-examination in April. His evidence did not in any way smack to me of someone who had sat and rehearsed some made up facts. Quite the reverse. The documentary evidence from Mr. McAlpine's Amazon account shows the dates of his purchase of the CCTV in November 2017 and his return of the related hard drive in early January 2018. I find that this entirely supports his and Ms. Hall's position that they had only ever bought and installed the CCTV because of the Croydon cat killer because in November the Defendant had only recently been remanded in prison as a result of the July 2017 assault and I accept Ms. Hall and Mr. McAlpine's evidence that they had been told by the Claimant Housing Association that the Claimant would look to evict the Defendant whilst he was in prison and that they only discovered at the end of January 2018 that the Defendant had been released on tag.

32. The Defendant also sought to prove that the CCTV equipment Mr. McAlpine bought was itself capable of recording and storing these recordings. The Defendant showed me at Exhibit 3 of the affidavit of Ms Spowart of 15th February 2019 a printout from a website called www.annke.com which the Defendant said was the CCTV equipment Mr. McAlpine had bought. The Defendant argued that the specification from that website showed the CCTV came with a hard disk capable of recording up to 6 terabytes of data. In cross-examination during the April hearing Mr. McAlpine explained that he had bought a separate hard drive because it was cheaper and he repeated his evidence from January that he had never been able to get the CCTV to record to the hard disk which is why he had returned it in January 2018, as I have already explained. I have already explained why I accept that the CCTV Mr. McAlpine installed was not able to record. I also note that the website the Defendant has referred me to appears to be a US website and not a UK website as the price is displayed in dollars and not pounds. I accept Mr. McAlpine's explanation that he had bought the recording storage hard disk separately because this was cheaper and I am supported in that finding by the fact that I have evidence of Mr. McAlpine's Amazon account showing the purchase in November 2017 and return in January 2018 of the hard disk drive Mr. McAlpine has referred to. I also do not find that I have sufficient evidence to be satisfied that what appears to be the American website I was referred to does properly reflect the specific items that were purchased by Mr. McAlpine. For all of these reasons I accept that the CCTV installed by Mr. McAlpine was installed by Mr. McAlpine and Ms. Hall because of the Croydon cat killer and not because of the Defendant, and I accept that it was never used to record footage of the areas covered by the two CCTV cameras on the outside of their flat because neither Ms. Hall nor Mr. McAlpine had ever been able to get it to do so.
33. The Defendant also argued that the CCTV cameras did not point at the locations Mr. McAlpine had said they did. However, despite the best efforts of both counsel and some photographs of the cameras and the area around them I have not seen enough evidence to take this point one way or the other. Anyway, given that I accept the CCTV cameras did not ever record anything, whether they did point at a particular location or not is, in my judgment, of no significance and it would not either way affect my assessment on credibility.
34. I have also considered each witness's credibility apart from this issue of the CCTV footage, and I will deal first with Ms. Hall's credibility. I found Ms. Hall to be a straightforward and honest witness doing her best at all times to assist the court. She was frank and open about her desire to have the Defendant gone from her life and when she ought to have done I found that Ms. Hall made appropriate concessions, especially concerning some of the alleged breaches. For example, it was alleged that on 4th May 2018 the Defendant breached paragraph 5 of the injunction by repeatedly slamming the front door and banging on the wall between the two flats with what sounded like a hammer. It was put to Ms. Hall that this could have been the noise of the Defendant undertaking DIY rather than the noise being a deliberate nuisance. Ms. Hall very straightforwardly accepted this was possible and did not seek to argue against that suggestion.
35. Also, some of Ms. Hall's evidence is borne out by the Defendant's own frank admissions about his behaviour. Ms. Hall's evidence was that in the afternoon of 4th May she was in the rear garden with her brother. She heard the Defendant through his

open window using phrases such as: “Yes, suck it good Perry” and “yeah, lick the rim” and the Defendant admitted using language something along those lines.

36. Ms. Hall’s evidence concerning the allegation on 21st June was also supported by two pieces of contemporaneous evidence. That allegation was that the Defendant walked past Ms. Hall’s car, spat onto the floor and started shouting “dirty, dirty arsehole” at her. The first piece of contemporaneous evidence supporting Ms. Hall’s account was first identified during her live evidence when it became apparent that Ms. Hall had been texting on her mobile with Mr. McAlpine when this alleged incident took place. Ms. Hall was able to produce the mobile phone and text conversation to the court and that evidence showed that there was texting by Ms. Hall to Mr. McAlpine sent on 21st June 2018 at 20.28, when Ms. Hall wrote: “Just got home to loads of police cars at the end of our road. Was hoping Tim did something but sadly it’s a car accident.” Then timed at 20.30 another message: “Ok. Tim just walked up the road behind me, saw me, spat on the floor and started saying: ‘dirty, dirty arsehole’. Calling the police.” There is then a reply from Mr. McAlpine at 21.19: “The fuck, you ok? Will call in a bit if you want. Just finishing dinner.” In my judgment, as I have said, this shows Ms Hall was indeed messaging Mr. McAlpine at 20.28 and at 20.30 on 21st June 2018 about this allegation.
37. The second contemporaneous piece of evidence was CCTV still photographs produced by the Defendant and obtained from the owners of a house that is on the opposite side of the road to the Defendant and Ms. Hall/Mr. McAlpine’s flats. Those CCTV stills are dated 21st June and timed from 19.21.15 to 19.29.24. There was discussion between counsel and myself in the hearing as to the time difference: roughly one hour between the times on Ms. Hall’s phone and the times on the CCTV. I find it is likely that the times on the CCTV show an hour earlier because the CCTV has not been set up correctly to take account of daylight savings time changes. As I say, these stills show, amongst other things, Ms. Hall holding something in her hands that she remains looking at almost throughout. Her evidence was that she was looking at and using her mobile phone and the CCTV stills independently bear this out. It is also important to note that Ms. Hall was not aware of the existence of the CCTV footage at the time she prepared her affidavit concerning this allegation, which she made on 22nd July 2018. And, as I have said, the footage does not in any way conflict with that written evidence. Standing back, it would also have to be the case that Ms. Hall was engaged in some significant Machiavellian style strategy if whilst being unaware of these CCTV stills she had timed these particular text messages with the allegations that they contain to Mr. McAlpine which are then supported by the fact that the CCTV stills show her in that location and in a stance where she appears to be holding the phone in her hand and sending messages. And, in my judgment, that type of Machiavellian strategy simply was not part of Ms. Hall’s behaviour or intent. For all of these reasons I find Ms. Hall to be an entirely credible witness whose evidence I accept entirely.
38. Turning to Mr. McAlpine, his evidence is almost entirely disputed by the Defendant. Like Ms. Hall, I observed Mr. McAlpine carefully during his two sessions of evidence and, despite Mr. Locke’s detailed and careful questioning during cross-examination, I found Mr. McAlpine to be certain in his evidence and sure in his position. He, too, was open about his desire to have the Defendant evicted and made no apology for

this, given what he said was the nature of the Defendant's conviction for the assault in July 2017.

39. Some of his evidence has also been supported by documentary and other witness evidence. I have already referred to the Amazon account information obtained for the hearing in April which supported the evidence Mr. McAlpine had given at the 30th January hearing about why he had installed the CCTV cameras. There is also the allegation concerning the meeting on the pavement between the Defendant and Mr. McAlpine on 19th August 2018. Mr. McAlpine's position is supported by the single CCTV image showing Mr. McAlpine and the Defendant on the pavement outside their flats. That shows Mr. McAlpine standing with his side to the camera and carrying a large blue backpack and it shows the Defendant on the far side of Mr. McAlpine walking past him. Having examined the picture in clear detail, it is clear to me that the Defendant is walking past Mr. McAlpine and, contrary to what the Defendant said in his evidence, which was that Mr. McAlpine was wearing a rucksack on his front so that the allegation that the Defendant had come within an inch of Mr. McAlpine's face simply was impossible on the Defendant's account, it is clear to me, looking at the photograph, that Mr. McAlpine was not wearing the backpack on his front. Looking at that photograph I can see that Mr. McAlpine is in black and I can see that the Defendant is wearing clothing of a different colour. You can see the front of Mr. McAlpine's chest, I can see his arms holding the rear backpack in a classic backpack style held onto his shoulders, holding onto what is no doubt the backpack straps and there is nothing at all, in my judgment, on the chest of Mr. McAlpine.
40. Also, Mr. McAlpine's evidence of what the Defendant said to him during the incident said to have taken place outside the flats on 27th February 2019 was supported by Ms. Hall, whose evidence I have accepted for the reasons I have just explained. Mr. McAlpine said that the Defendant had started to laugh at him and had then said: "I'm going to kill the fucking cunt." Ms. Hall's evidence was that she had heard the Defendant laughing and using the word "cunt". That support by Ms. Hall of Mr. McAlpine could have been much more extensive. She could have said: "I heard everything. I heard the Defendant use the words 'I'm going to kill the fucking cunt', but it does not, it simply states what I have said it does. In my judgment, Ms. Hall's support of Mr. McAlpine's evidence on this point is entirely believable and goes to support Mr. McAlpine's general credibility overall. In my judgment, for these reasons, and the reasons I have already given concerning the CCTV issue, I find Mr. McAlpine also to have been a straightforward, honest witness doing his best to assist the court at all times and I accept his evidence.
41. Regretfully, I cannot reach the same conclusion about the Defendant's credibility. In my observations of him under cross-examination I noted a number of occasions when he became angry, agitated and argumentative. He also spoke on occasion with a significantly raised voice, particularly when he was being questioned about the alleged incident on 19th August 2018 when he ended up accusing Mr. McAlpine of telling "lies, complete lies". But I remind myself again that a witness's demeanour is not of itself conclusive one way or the other.
42. I also, though, found there was a difference between the Defendant's written evidence and what he told me in court. The example concerns the incident of 21st June where it is alleged that he spat and said: "Dirty, dirty arsehole" to Ms. Hall as he passed her on the pavement outside their flats. In his affidavit of 22nd October 2018 at

paragraph 4 the Defendant said this: “On the evening of 21st June 2018 I only saw Ms. Hall once at around 7.30 p.m. I went out to the chip shop to get some food and then returned home. I noticed that she was standing outside and was making a telephone call from a mobile telephone. As I passed Ms. Hall I did not communicate with her at all.” During both examination-in-chief and in cross-examination at the January hearing the Defendant maintained that he could not have said anything to Ms. Hall because he had not seen her until he had passed her car. He told me that as he approached the car “I could see a head but I didn’t know who it was” and that he could not see the person’s face because it was obscured by the car. This was important evidence not included within his affidavit. It also appears to be at odds with the affidavit, where he said he had noticed Ms. Hall standing outside making a telephone call.

43. I have also had the advantage of the many CCTV stills from that day showing the Defendant approaching and walking past the car. From these it is clear Ms. Hall does not once move from her position once the Defendant has come into view of the CCTV camera. It is also, in my judgment, clear from the photos that Ms. Hall’s head and face would have been clearly visible to the Defendant before he reached the car that was between them. It appeared to me very much that the Defendant had changed his evidence to introduce the notion that he had not seen the person standing by the car and who that person was until he had passed the car. I find that he did this as he thought it would undermine the evidence he had heard Ms. Hall give earlier the previous day when she said that he had spat and then said the words “dirty, dirty arsehole” once he drew level with her car.
44. The Defendant was also, in my judgment, making his answers up on the spot during his cross-examination in the April hearing. Ms. Hodgson for the Claimant had asked the Defendant about the alleged incident on 27th February 2019. This was, I think, the only allegation that the Defendant flatly denied had ever happened. In his affidavit of 5th April 2019 he stated this: “On 27th February 2019 I had no contact with Mr. McAlpine. I returned home at around 7 p.m. to 7.30 p.m. Within an hour the police arrived and they stated they were arresting me for threats to kill.” He was asked about this by Ms. Hodgson, who asked whether there was anything that had happened at around 6.30 p.m. that made the Defendant think he should remember it. My note of the Defendant’s reply was this: “I was eating my kebab. I was out at about 3 in the afternoon and I bought the kebab at seven, half-seven/eight.” Ms. Hodgson then asked the Defendant about the allegation that, immediately after he had threatened to kill Mr. McAlpine, he had gone into his flat and started deliberately stomping around on the floor. The Defendant denied this was him. He said the video recordings made by Ms. Hall and Mr. McAlpine that had been shown a little earlier during the April hearing were taken on a different day and not, as Ms. Hall and Mr. McAlpine say, on 27th February immediately after the alleged encounter between the Defendant and Mr. McAlpine. The Defendant told Ms. Hodgson that it could not have been that day because he had been out since 3 p.m. and he continued to maintain that was the case under further cross-examination. He was then shown the witness statement made on 27th February 2019, so on the same day, by Police Officer Hannah Cooper. That statement says that she and another officer knocked on the Defendant’s front door, that he opened the front door and at 18.43 Officer Cooper told the Defendant he was under arrest for the threat to kill. It was put to the Defendant that this meant he had been at home immediately before his arrest, but, despite this, the Defendant continued

to maintain that the video recordings could not have been made that night as he had not returned home until 7.30 p.m. He was adamant on the issue.

45. The cross-examination continued on this point, and it became yet more clear to me that the Defendant was being less than straightforward with his evidence. He started to say that the timings he had given were 'to the best of his recollection'. Then he said: "It's possible it is wrong, I'm not saying it is definitely." Then he said the noise wasn't stomping at all but was just him walking upstairs into his flat. I found his evidence on this point in particular to be poor and I still do not understand why, in the face of the arresting officer's report giving the time of arrest at 18.43, the Defendant continued to maintain that he had been out all afternoon and had only returned home and, to use his words, he was "definitely somewhere else and got home that time between 7 and 7.30". It was clear to me that the Defendant had entirely made up the kebab story and his being out of the flat at the time of the alleged incident on 27th February to enable him to say that it could not have happened because he was not there.
46. I have borne carefully in mind my earlier Lucas direction, but taking all of this together I have come to the regretful conclusion that I am sure the Defendant's evidence cannot, where it is in disagreement with the evidence given by Ms. Hall and Mr. McAlpine, be accepted as correct.

The allegations

47. I turn therefore to my findings on the allegations themselves. The allegation on 4th May 2018, which is the allegation concerning the slamming of the front door and the banging on the wall with what sounded like a hammer. As I have said, Ms. Hall conceded in her evidence that that noise could have been created by the Defendant carrying out DIY, and that is, as I understood it to be, the Defendant's case. So I do not find that I can be sure beyond reasonable doubt that this was a breach by the Defendant of paragraph 5 of the injunction given that the Defendant could just have been carrying out DIY, so I find that allegation not proven.
48. The second allegation concerning 4th May 2018, was the allegation where the Defendant has told me that he agrees that he was on a telephone call to his friend Perry. He admitted he was having a lewd conversation with Perry, it was a hot May afternoon and his window was open and he admits he was probably using phrases along the lines of the allegation against him. He admits that he had a loud laugh. He also admits that it is possible that these words were passing out of the window to the hearing of anyone outside of the property. But the Defendant has said (and it has been submitted on his behalf) that this was a telephone conversation taking place in the privacy of his own home and he says for this reason it cannot be the case that he was engaged in conduct causing or capable of causing nuisance or annoyance to any person in breach of the injunction. I do not agree. I accept, as the Defendant admits, that he used these words and I recall that I asked him the question: "You may not accept that it was causing a nuisance or annoyance to Ms. Hall or her brother, who were in the garden at the time" but I had asked if it was a little old lady who had heard that would it cause a nuisance or annoyance to her, and he admitted that it would. But that is not the test. In my judgment, it is an objective test, and objectively if a person is standing in their garden and they can hear someone loudly having that type of conversation I find that it would be a nuisance or an annoyance. I do not accept the

contention that just because someone is having a private telephone conversation in their home that they are then entitled to use words to such a volume that those words can be heard outside, particularly not when the words are lewd, and so I find that allegation proven beyond reasonable doubt.

49. The third allegation concerns the allegation on 5th May 2018 when the Defendant was said to be staring at his neighbour Ms. Hall from the window of his property. I do not find that allegation to be proven at all. There is nothing in the injunction which says the Defendant cannot look out of his window, and the evidence I heard from Ms. Hall on this point was not, in my judgment, sufficient to show that his looking at her was in any way deliberately designed to be a nuisance or annoyance to her, so I find that allegation to be not proven.
50. The next two allegations are very similar and I will deal with them together. These are the allegations that on 18th May 2018 and 22nd May 2018 the Defendant, together with a third party, was in effect causing a lot of loud noise both in his flat and outside of his flat which caused Ms. Hall and Mr. McAlpine to be woken up. The Defendant admits himself that the woman was there and he admits that they were laughing and, as he had said to me before, he has a loud laugh. Again, his position is that these were conversations taking place within the privacy of his home and he does not accept that they were conversations or other behaviour that was so loud as to be causing a nuisance or annoyance. However, I accept Ms. Hall and Mr. McAlpine's evidence that the noise woke them. I also accept their evidence that they told me that the noise was so loud that it prevented them from getting back to sleep. They did provide audio recordings of what they say was this noise nuisance but they admit those recordings themselves would not assist the court. To be clear, I do not rely in any way on those recordings in coming to this finding; I rely entirely on my assessment of Ms. Hall's and Mr. McAlpine's credibility and I accept as true what they have told me about being woken up and being kept awake by the Defendant's behaviour. So in respect of both allegations I am sure beyond reasonable doubt that these allegations are proven.
51. The sixth allegation is that of 21st June 2018. This is the allegation that Ms. Hall was standing by her car and that as the Defendant walked up to the car he spat loudly twice on the floor next to her car and then started shouting: "Dirty, dirty arsehole" at her. I have already explained the text message that Ms. Hall was sending Mr. McAlpine contemporaneously as the alleged incident occurred and I have explained already why I prefer her evidence on this point. I hold that the evidence she has given in her affidavit and that she gave to me in her evidence on 30th January is to be preferred over the Defendant, for the reasons I have already given as to credibility. I also accept that the text message is contemporaneous evidence that supports my finding and so for those reasons I find that this allegation is proven beyond reasonable doubt.
52. The seventh allegation concerns the meeting between Mr. McAlpine and the Defendant on 19th August 2018 in the afternoon on the pavement just outside the property. I have already outlined the allegation itself, but the Defendant's evidence is that Mr. McAlpine had deliberately walked up to him and that there had been no need for him to do so, but rather they had simply approached each other and then had danced the 'pavement tango', in other words they had both tried to go in the same direction at the same time and they had had to walk around each other and that was why there had been this sudden proximity to each other. The Defendant also alleges

that Mr. McAlpine told him something along the lines of: “Leave my fucking wife alone.” Mr. McAlpine’s evidence was that he had been returning from a weekend away with friends, a ‘live action role-play’ weekend where people dress up as fighters and heroes, and he had on his back this backpack with all his gear and he was holding in his right hand a pretend shield and I think a pretend axe, and he had nothing on his front. The Defendant was insistent that Mr. McAlpine had a pack on his front as well as on his back and that the presence of this front pack would have made it impossible for the Defendant to come into the type of proximity alleged – namely that he stopped about an inch away from Mr. McAlpine’s face. I have already found (an I am sure) that there was no pack on the front of Mr. McAlpine for the reasons I have given. It strikes me that that introduction of this front pack by the Defendant was his attempt create a reason why it was not possible for the incident to have taken place in the manner Mr. McAlpine says it did. But for these and my earlier reasons concerning the Defendant’s lack of credibility I prefer the evidence of Mr. McAlpine and I am sure beyond reasonable doubt that this allegation is true and I find that it is proven.

53. The final allegation is the one concerning 20th February 2019, that Mr. McAlpine had gone out to get some cat litter from the bins and as he had turned to go back to his flat the Defendant had come down the pathway, I think he had been outside, and he had come and stood and started laughing at Mr. McAlpine, called him a “fucking idiot” and said: “What are you going to do, arrest me?” He had then gone into his flat and as he was going into his flat he shouted: “I’m going to fucking kill the cunt.” I accept that these are words that the Defendant used and I also accept that these are words aimed at Mr. McAlpine. I also accept this because of the reasons I have already given for preferring Mr. McAlpine’s evidence over the Defendant’s. So I am sure beyond reasonable doubt that the allegation is proven.
54. Turning finally to the allegation of 17th January 2019 (this is not part of the committal application but I said I would make a finding in relation to it on the balance of probabilities), this is the allegation that the Defendant spat next to Mr. McAlpine and did so twice. Again, for the reasons that I have given, this issue comes down to one of credibility. There is no independent evidence available. As I prefer the evidence of Mr. McAlpine given the difference in the his and the Defendant’s credibility I find that, on the balance of probabilities, this allegation is also proven.

This judgment has been approved by the Judge.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. Fax No: 020 7831 6864 DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com