

IN THE COUNTY COURT AT BROMLEY

College Road, Bromley,
Kent. BR1 3PX

Thursday 20th June 2019

Start Time: 3.49 p.m. Finish Time: 4.02 p.m.

Page Count: 5
Number of Folios: 31

Before:

DISTRICT JUDGE CRIDGE

**PHOENIX COMMUNITY HOUSING
(BELLINGHAM & DOWNHAM) LTD.**

Claimant

- and -

TIMOTHY PATRICK O'KEEFE

Defendant

JANE HODGSON for the **Claimant**
ANDREW LOCKE for the **Defendant**

SENTENCING REMARKS

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SENTENCING REMARKS

JUDGE CRIDGE: I now consider sentencing. There are three objectives to be considered when sentencing. The first is punishment for a breach of an order of the court and in this regard sentencing must be proportionate to the seriousness of the offence. This is to be determined by assessing the culpability of the Defendant and the level of harm the breach has caused or was at risk of being caused. The second is to secure future compliance with the court's orders if possible, and the third is the rehabilitation of the Defendant. I must give a sentence in respect of each breach of the order that I have found proven.

I also take into account the sentencing guidelines concerning the breach of an anti-social behaviour order, which guidelines took effect on 1st October 2018. The guidelines provide a number of steps the court must take when sentencing in cases of this type. The first is to determine the offence category by assessing culpability and harm. The parties themselves are agreed that this is a Category B breach and I agree that these were deliberate breaches which fall between levels A and C. I do note, though, that these are repeat breaches and could be said to be persistent, but I do not find that they are at level A of culpability so I agree that level B is the correct level of culpability.

In terms of the level of harm, I assess harm by weighing up all of the factors of the case to determine the harm that has been caused, or was at risk of being caused. I have also considered the original activity for which the injunction was imposed and the circumstances in which the breaches have arisen.

The sentencing guidelines provide three categories of harm: 1, 2 and 3. The parties say this is a Category 2 level of harm, and I agree these breaches did not cause very serious harm or distress but neither were they breaches that caused little or no harm or distress. So I agree that Category 2 is the correct assessment of harm.

Having assessed culpability and harm, the sentencing guidelines then provide the court with the starting point of the sentence with a range of available sentences above and below that starting point. For this case the guidelines give a starting point with a sentence of 12 weeks imprisonment and a sentencing range of a community order, which is not an order which I can make, up to a maximum of one year imprisonment. I must also take into account any aggravating and mitigating factors that would suggest I should increase or decrease the sentence. I must also consider whether there are other factors that would suggest the appropriate sentence falls outside of the sentencing range the guidelines suggest. I have heard

the parties' submissions on the aggravating and mitigating factors. In my judgment, these are the aggravating factors. These are breaches which have gone on over an extended period of time and I also take into account the matters which gave rise to the original grant of the injunction, in particular the seriousness of the offence for which the Defendant was convicted in January 2018 when he was sentenced to 20 months' imprisonment for GBH for slitting or cutting the throat of a visitor of his on the doorstep of Mr. McAlpine and Ms. Hall's flat. As I say, these are repeated breaches and I find they are breaches which were targeting people who the injunction named and intended to protect. I also note these are breaches which were committed shortly after the injunction had been made. I also take into account the effect the breaches of the injunction have had on Ms. Hall and Mr. McAlpine. I note in particular Ms. Hall's evidence of her fear of the Defendant and the manner in which she has told me she feels she must exit and re-enter her property. Those are the aggravating factors.

These are the mitigating factors. Although there have been repeated breaches, I accept that there have been extended periods of time when the Defendant has complied with the injunction and I note that there have been no recent allegations of a breach of the order. I also note the Defendant has had to cope with the realisation that his conviction in July 2017 has led to Ms. Hall and Mr. McAlpine wanting rid of him and that no doubt has had an effect on how he perceives himself and how he perceives his relationship with Ms. Hall and Mr. McAlpine. I also take into account the information I have been provided concerning his mental health and depression and the admissions he has made concerning his abuse of alcohol. I also take into account the fact that there is no evidence before this court of any difficulty the Defendant had with the previous occupiers of the flat now occupied by Ms. Hall and Mr. McAlpine and that he has been his property for some 20 or so years before any problems started to arise.

Taking all of these matters into account, in my judgment the appropriate provisional sentence in this case for breaches 2, 4 and 5, those are the breaches of 4th May 2018, 18th May 2018 and 22nd May 2018, I assess as being four weeks. In relation to the breaches 6, 7 and 8 these are the breaches where there has been direct interaction between Mr. O'Keefe, Ms. Hall and Mr. McAlpine. I find these breaches to be much more serious. I say that because these are breaches which took place when Ms. Hall and Mr. McAlpine will have had in their minds that the Defendant had been convicted for cutting or slitting someone's throat on their very doorstep and, in their minds at least, the Defendant was a dangerous man who was behaving aggressively towards them. As I have said, I accepted Ms. Hall's evidence in particular

concerning her fearfulness in her dealings with the Defendant. In my judgment, the proper and proportionate provisional sentence for each of those breaches is six months' imprisonment.

But is a custodial sentence necessary in this case and are the breaches that are proved sufficiently serious to justify a prison sentence? In my judgment they are. I say that for the reasons I have already given in discussing the aggravating features.

Having decided to impose a custodial sentence for each of the breaches I also need to decide whether those sentences should run consecutively or concurrently. I also take into account the principle of totality, i.e. whether the total sentence is just and proportionate to the overall offending behaviour. Because of the similar nature of the breaches and the time period over which they have taken place, in my judgment the sentences ought to, and I order that they are to, run concurrently. I do consider that an overall total sentence of six months is, for the reasons I have explained in relation to the aggravating and mitigating features, just and proportionate.

I must also consider whether the sentence should be suspended. Suspending a sentence may help in meeting two of the objectives of sentencing, namely, to secure future compliance with this court's order and to secure the Defendant's rehabilitation. This is the first time the Defendant's committal has been sought concerning this order. I am also mindful though that the breaches are serious. Taking all of the matters that I have discussed now and earlier in my sentencing remarks into account, it does seem to me that this is a case where the sentence should be suspended.

I will now pass sentence. Stand up, please, Mr O'Keefe. You have heard what I have said about the nature of the breaches. I have found that they are serious breaches, particularly the breaches where you were directly interacting with Ms. Hall and Mr. McAlpine and they are serious breaches for which I feel a prison sentence would be appropriate. So I impose the sentences of four weeks for each of the three breaches I have already referred to and six months for the other three breaches I have previously referred to. I consider that a sentence of this kind marks the very serious view that this court has taken of your behaviour and for your contempt of this court by not complying with this order. However, I am anxious that you should not commit any further breaches and I am satisfied that you have more recently shown that you are capable of complying with the order of the court. So I am suspending that sentence for a period of two years until 20th June 2021. To be clear, the injunction remains in place and it is a condition of the suspension of your sentence that you must not breach the

injunction again. It is also a condition that you must not go within 100 metres of 74 Broadmead from the later of the date on which my order today for possession takes effect or the day on which you are evicted under that possession order. So it takes effect from that time and not before that time. I have imposed that condition and find that it is proportionate for me to impose it as there is a need to ensure continued compliance with the injunction and to provide ongoing protection for Ms. Hall and Mr. McAlpine. If you are later found to have breached either of those conditions, then the suspension will be lifted and the prison sentence which I have imposed will be immediately activated and you will go to prison. Any further breaches of the injunction which are found proven or breach of the conditions which is found proven may also be dealt by the imposition of further prison sentences. I am also extending the injunction against you on the same terms. It will now expire concurrently with the expiry of the suspension period, namely on 20th June 2021.

This has been approved by the Judge.

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