

IN THE COUNTY COURT AT BIRMINGHAM

Birmingham Civil and Family Justice Centre
33 Bull Street
Birmingham
B4 6DS

Date: 19th January 2023

Before:

HER HONOUR JUDGE TRUMAN

Between:

MIDLAND HEART LIMITED

Claimant

- and -

MS SANDRA VIOLA BROWN

Defendant

MR SINGLETON (instructed by **MS HARGREAVES**) for the **Claimant**
The **Defendant** was not present and was not represented

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.

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[Transcriber's note: transcript prepared without access to case documents.]

HER HONOUR JUDGE TRUMAN:

1. This matter concerns an application by the Claimant, Midland Heart, for the Defendant, Sandra Brown, to be committed to prison for contempt. It arises out of a breach of an injunction made on 8 November 2022, by Record Khangure KC. Under the terms of the injunction, the Defendant was to permit the Claimant to enter into the property for the purposes of the gas safety check.
2. In view of the difficulties previously experienced, the Claimant was given permission to essentially change the locks on the front door, in order to be able to gain entry if the Defendant did not allow them access. This was because the gas safety checks are a matter of serious concern. They are there to protect the tenant, any other occupiers, and the neighbours, and the fact that the Defendant was not allowing the Claimant in did, therefore, potentially represent a serious safety hazard.
3. This matter came before me on 5 January 2023, when I was satisfied that the Defendant had been appropriately served with the Injunction Order, had been appropriately served with regard to a request for access, that such access had been denied, and that the Defendant was in breach of the Injunction Order.
4. The matter was further adjourned because of the fact that the Defendant had not been in attendance, and both the Claimant and I were anxious that she should be given a further opportunity to comply with the injunction, to attend court, and to explain, from her point of view, what had been occurring. I am satisfied there was due service of the order made on 5 January 2023.
5. The order that was served on her was a detailed order, but made it as plain as we could, that I was satisfied that the Claimant was indeed the Defendant's landlord, that the Claimant was entitled to have access to the premises, and indeed was under potentially criminal penalty obligations to carry out the gas safety check.
6. The Defendant was reminded that she should attend today's hearing, that there was a risk of a sentence of imprisonment. She was urged to get urgent legal advice, details of which had been supplied to her before. She was reminded that Legal Aid was likely to be available to her. She had, of course, previously engaged with solicitors, to assist her in defending a possession claim, and she was advised that she might be able to also make an urgent application to suspend the warrant for possession. She was specifically advised that if she apologised for breach of the injunction order, and/or let the Claimants in, that was likely to carry substantial weight, which could result in a reduced sentence, or indeed no sentence at all, being imposed.
7. I am satisfied, from the evidence that I have read and heard today, that the Claimant did endeavour to make further arrangements to attend at the property, for the purpose of the gas safety check. Arrangements had been made with appropriate notice given to the Defendant of a visit on 10 January 2023, but there was no response when the Claimant attended with its contractor. Further arrangements were made for another appointment. I am satisfied that, again, there was sufficient notice given to the

Defendant of those arrangements. I am satisfied that when the Claimant again attended with its contractor for the second appointment, that it was not given access.

8. I mention these not because they increase the severity of the sentence to be imposed, and nor because they are technically a further breach of the injunction, because that is not the allegation that is before the Court. I mention these because of the fact that they are evidence that the Claimant has tried very hard to get the Defendant to let them in, because they do not actually wish to either send her to prison, or to have her evicted. They have tried very hard to resolve this matter with her. They have been very concerned about the fact that she had been a model tenant for them, for a good many years, before difficulties arose in 2021, which appear to coincide with the Defendant's son moving into the premises.
9. An eviction was due to take place on 11 January 2023. The Defendant, and a person believed to be her son, refused to vacate the premises. The police were not able to attend at that time and, therefore, the eviction did not proceed. The Defendant had made no application to suspend that warrant.
10. The Claimant has tried again to involve Adult Social Services, but I am satisfied that they have been advised by the Local Authority that the Defendant does not meet their criteria for referral. There might be a potential for a referral for floating support, but the Defendant would need to actively give her consent for that.
11. The situation that the Claimant and I find ourselves in is that we have a lady, who was, as I say, a model tenant for a good many years, but who is now not paying her rent and not allowing the Claimant access, and has signed a document, which has been referred to as a "statutory declaration", which says that she is the proprietress, or holder, of the property. It is not a statutory declaration. It is witnessed by her son, and not a properly authorised person, and I am satisfied, from all the evidence that I have seen, that this lady is, and was, a tenant of Midland Heart Limited, and they are the registered proprietors of the property rented to the tenant.
12. At the present time, I have a lady who, whilst behaving in a different manner from that previously, does not appear to have a disability and is not known to have any vulnerabilities. She has been given a number of opportunities to comply with the injunction order and to avoid a sentence for contempt. Regrettably, she has not taken advantage of those opportunities.
13. I remind myself that there are three objectives to be considered when dealing with a proven breach of an order: the first is punishment for breach of the order; the second is to secure future compliance with the court's orders, if possible; and the third is rehabilitation, which is a natural companion to the second objective.
14. There is a stepped approach to be taken, to arrive at the appropriate penalty for contempt. The first step is to determine the seriousness of the breach. That depends upon assessments of culpability and harm. In respect of culpability, there are three levels: A is high culpability, very serious breach or persistent serious breaches; B is a deliberate breach, falling between A and C; and C is lower culpability of minor breaches.

15. I am prepared to assess this breach in the Defendant's favour, as falling between A and C, and thus being Level B. I have to treat the Defendant as being an adult with full capacity, and there have been a considerable number of opportunities to allow her to comply with the injunction. But I am also conscious of the fact that through her own choice – apparently – she has not put forward any potential mitigation, and I am anxious not to impose too great a sentence in the circumstances of this case.
16. I will, therefore, assess the level of culpability as B.
17. With regard to harm: Category 1 is breaches causing very serious harm or distress; Category 2 is cases falling between Categories 1 and 3; and Category 3 is a breach which causes little or no harm or distress.
18. It seems to me that this is a Category 2 case. The harm that is being occasioned is the fact that the Claimant cannot carry out its statutory obligations to carry out a gas safety check. The whole purpose of the gas safety check is to protect the health and safety of the tenant, other persons who live with her, and her neighbours. Whilst the breach, at the moment, has caused no direct harm, in the sense of there being gas leaking or gas explosions, it is causing harm, in the sense that the Claimant is being deprived of the opportunity to protect the health and wellbeing of its tenant and other persons.
19. The whole reason the gas safety regulations were brought in was because of the fact that people had been dying. There is, therefore, a risk of serious injury. That has not yet occurred, and that is why I consider that this matter falls between Categories 1 and 3.
20. The starting point, under the guidelines, would be one month, but the category range has adjourned consideration to three months.
21. I adjourned this matter on the last occasion, to try to get the Defendant to comply, specifically advising her that it might then be possible to impose no sentence at all, if that were done, because of the fact that the real purpose of this application is to try and allow the Claimant in. The Claimant was unable to take advantage of the part of the injunction which permitted them to essentially force the door, because of the fact that their way was physically blocked by the other occupants of the premises, and the police advised the Claimant, at that particular stage, that if they attempted to move those persons out of the way to gain entry, they, themselves, might be at risk of being arrested.
22. In one sense, therefore, the adjourned consideration has already taken place because of the fact that this matter was adjourned to enable the Defendant to comply, but she has failed to comply on two separate occasions since.
23. According to the guidelines, examples of factors increasing seriousness are: a history of disobedience of court orders; a breach committed shortly after the order was made. Examples of factors reducing seriousness or reflecting personal mitigation are: a breach committed after a long period of compliance; genuine remorse; age and/or lack of maturity where it affects the responsibility of the respondent; ill health, mental disorder, or learning disability; sole or primary care of a dependent relatives.

24. Neither the Claimant, nor I, have been advised of any factors which might reflect personal mitigation in respect of this particular Defendant. But I am again mindful of the fact, that this lady was a model tenant for a great many years, until relatively recently, and it does appear from the information before me, that that coincided with the Defendant's son moving back into the premises.
25. This lady is still, on the face of it, an adult with full capacity and, therefore, has to bear some responsibility for her own actions, but I am mindful of the fact that there may well be outside influences.
26. I cannot make any reduction for admissions, because there have been no admissions, and indeed this lady sent a statutory declaration, which appeared to suggest that she considered that this was her property and, therefore, the Claimant would not be allowed in at all.
27. I do consider that, unfortunately, the breach to date is one which justifies a custodial sentence being imposed.
28. The possible options are whether this matter can be suspended on further terms, or whether I can impose a suspended custodial sentence at this particular point. Factors indicating that it would not be appropriate to suspend a custodial order are: where the respondent presents a risk or danger to others; appropriate punishment can only be achieved by immediate custody; and there is a history of poor compliance with court orders.
29. Factors indicating that it may be appropriate to suspend the committal order are: a realistic prospect of rehabilitation, or addressing the underlying causes of antisocial behaviour; strong personal mitigation; and where immediate custody where result in a significant harmful impact upon others.
30. This respondent's behaviour does present a risk or danger to others because of the fact that she is not allowing the Claimant in to carry out the gas safety check. She has been given the opportunity of compliance already; unfortunately, the history so far does indicate a poor compliance with court orders.
31. I have no factors which indicate a realistic prospect of rehabilitation. I have no factors indicating a strong personal mitigation. I have no factors indicating that an immediate custodial sentence would result in a significant harmful impact upon others.
32. However, I am very mindful of the fact that one of the purposes of this type of order is to try to ensure compliance. It seems to me that, in the circumstances of this case, the sentence to be imposed would be 14 days' imprisonment. However, I am willing to suspend that on terms that the Defendant complies with the Claimant's obligations and allows the Claimant in, to carry out the gas safety check.
33. I will, therefore, give the Defendant one further opportunity, to allow the Claimant access to the premises, upon the giving of the appropriate 48 hours' notice in the manner previously directed. If the Defendant fails to permit access, then the Claimant must supply appropriate evidence of that failure to comply, and the custodial sentence will then be activated.

34. For the avoidance of doubt, because this lady has not been arrested beforehand, I do not need to consider any time spent on remand. The Defendant will need to be reminded of her right to apply to purge contempt. She will need to be reminded that permission to appeal is not needed, and she will need to be reminded of the time limit for, and the route of, appeal.

(See separate transcript for proceedings after judgment)

(This Judgment has been approved by HHJ Truman.)