

IN THE COUNTY COURT AT LEEDS

Case No: H01LS160

Courtroom No. 19

The Courthouse
1 Oxford Row
Leeds
LS1 3BG

Tuesday, 28th February 2023

Before:
HER HONOUR JUDGE CLAIRE JACKSON

B E T W E E N:

A. SIMON APPLESON
B. DOMINIC BROOKS
C. HARRY WATERHOUSE
D. ALEX HOBSON

Applicants

and

LINDSEY FRANCES FOLEY

Respondent

MS RACHEL CARROLL appeared on behalf of the Applicants
NO APPEARANCE by or on behalf of the Respondent

APPROVED JUDGMENT

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HHJ JACKSON:

1. This is the sentencing hearing following a successful application by the Claimants to commit the Defendant for contempt of court. In a separate judgment, I have set out the background to the application and the findings against the Defendant.
2. I have considered whether it is appropriate to proceed with sentencing in the absence of the Defendant. I consider it is appropriate to still proceed because the Defendant has chosen to absent herself from these proceedings. She has chosen not to engage, and therefore, to adjourn is simply to put off the matter of sentencing.
3. Further, given the sentence that I have concluded is the appropriate sentence, the Defendant will have one final opportunity to provide the information before the serious consequences of the sentence I will impose will impact on her.

Sentencing: The Law

4. Penalties for contempt of court are principally either a fine or committal to prison pursuant to, and subject to the limitations imposed by, section 14(1) and (2) of the Contempt of Court Act 1981.
5. By the provisions of Civil Procedure Rule 81.9, the Court has the following powers:
 - “(1) If the Court finds the defendant in contempt of Court, the Court may impose a period of imprisonment (an order of committal), a fine, confiscation of assets or other punishment permitted under the law.
 - (2) Execution of an order of committal requires issue of a warrant of committal. An order of committal and a warrant of committal have immediate effect unless and to the extent that the Court decides to suspend execution of the order or warrant.
 - (3) An order or warrant of committal must be personally served on the Defendant unless the Court directs otherwise.
 - (4) To the extent that the substantive law permits, a Court may attach a power of arrest to a committal order.
 - (5) An order or warrant of committal may not be enforced more than two years after the date it was made unless the Court directs otherwise”.
6. The purpose of the contempt jurisdiction is to uphold the authority of the Court by punishing a contemnor and deterring others, and in some cases also to provide an incentive for belated compliance with a court order. A sentence of imprisonment should only be imposed if nothing other than a custodial sentence is justified.
7. While I have been directed by Counsel to the Sentencing Council guidelines and I have borne these in mind in reaching my judgment, sentencing is a fact-specific exercise. Whilst authorities provide guidance as to the way sentencing should be conducted and the matters that can be taken into account, they are not authority for the appropriate sentence in each case. I therefore look at sentencing within the context of the relevant statutory provisions that I have already referred to, being the two-year maximum or the alternative sentence of a fine.
8. The Defendant has not attended this hearing and has therefore provided no explanation for her contempt of court, and no mitigation to the Court. It is always unfortunate where somebody refuses to engage with the court process; but necessarily the court process must proceed in any event.

Findings

9. Contempt of court committed by a party failing to comply with a court order is necessarily serious; see *Financial Conduct Authority v McKendrick* [2019] EWCA Civ 524. In failing to comply with a court order, as the Defendant has done here, she has undermined the system of the administration of justice and the public interest in such, yet no explanation is provided by her for this.
10. In this case, the Defendant knew of the Order of District Judge Bond as she was personally served with it. The Order was clear as to what was required of her. She did not comply, and she has continued not to comply. She knows of these proceedings. She knows there have been four hearings. She has had the opportunity to attend. She has chosen not to attend. Again, that is a choice she has made. It is an available choice to choose not to engage with proceedings in terms of not attending hearings, and a Court must accept when somebody does that, that that is the case.
11. It was not, however, a choice open to the Defendant not to comply with Judge Bond's order. The simple point is that an Order of the Court was made. It had to be complied with. The Defendant was not entitled to refuse to comply with it. If she was unhappy, she could have applied to set it aside, she could have applied to appeal; but simply closing her eyes and pretending the Order was not there, or ignoring the Order, was not an option open to her. Her decision not to comply brings with it consequences.
12. The importance of complying with the Order with which this application is concerned was further clear from the jurisdiction in which the Court made the Order. The Order was made in relation to the provision of information to allow an account to be conducted. In failing to do what was ordered of her, the Defendant has effectively prevented the account from being taken, and she is, at the same time, impinging on the Claimants' right to promote their band, to earn monies from their band and to grow the following of fans and supporters. She is essentially in control of their career, even though she no longer is fulfilling the role as their manager.
13. As noted, the Defendant has failed to attend this hearing and therefore, she has failed to present mitigation in the case.
14. Looking at sentencing in a logical way, it is therefore incumbent upon me to first determine whether this is a case where the seriousness of the matter means that the custody threshold is crossed, or whether a lesser sentence, or no sentence, can be imposed. If no sentence or a lesser sentence is appropriate, then the Court should not impose a custodial sentence.
15. In my judgment, the contempt proved does need to be marked by some sanction, given the Defendant has deliberately failed to comply with an Order and is still in breach of that Order.
16. Further, in my judgment, quite plainly in this case, the custody threshold is crossed. The Order of District Judge Bond was not complied with by way of a deliberate decision of the Defendant, which amounted to a flat defiance of the Court's authority. The actions required have still not been completed; indeed, there has not even been a half-hearted attempt to comply with any Order. The contempt before me is therefore a serious contempt of court which requires punishment.
17. In terms of culpability, it is a first offence, falling within the Sentencing Council's culpability range B. It has led to some harm to the Claimants, although not very serious harm or distress. It does not demonstrate a continuing risk of serious criminal and/or antisocial behaviour. It therefore falls within harm Category 2.
18. In my judgment, without any mitigation, the lowest sentence that could be imposed on this Defendant is one of three months. A fine would be too lenient a sentence, in my judgment. There is, of course, no mitigation presented in this case, and therefore no basis on which the Court can properly reduce the sentence. I am therefore satisfied that the appropriate

sentence in this case is a sentence of imprisonment of three months.

19. Having considered the various stages and concluded the appropriate length of a custodial sentence, I must now however consider whether this is a case where the sentence should be suspended in all the circumstances of the case. Matters that the Court has to take into account are whether immediate custody would result in significant harm to others, whether it would prevent compliance with the Defendant's duties to the Court and the Claimants and the significance of an immediate custodial term, both as a punishment and as a deterrent. In deciding whether to suspend a sentence of imprisonment, I can take into account those matters already taken into account in considering the length of sentence. There is no double counting in sentencing in this regard.
20. There is no evidence before me that the Defendant presents a risk or danger to the public, or that immediate custody would result in significant harm to others.
21. In my judgment, taking into account all the matters before me, given the seriousness of the contempt, but it being a first contempt, and weighing against that the need for the Defendant to still provide the information to the Claimants so that the harm to their career can be ended, I find, and I will order, that the appropriate punishment in this case is one of custody for three months, suspended on terms that the Defendant must, by 4pm on 14 March 2023, i.e. 14 days, deliver up to the Claimants' solicitor a) copies of any financial statements or documents recording payments made to the Defendant on behalf of the Claimants, or any of them, b) copies of all contracts the Defendant has entered into concerning the exploitation of the Claimants' recording and publishing catalogues, and c) login and password details for any social media or other online accounts established by the Defendant in the Claimants' name, or in their trading name, Victors, or on the Claimants' behalf, or if the Defendant cannot provide such login and password details, recovery credentials for each applicable account.
22. For the benefit of the defendant, if she complies with that Order, which, save for timings, is exactly the same as paragraph one of Judge Bond's Order, she will not go to prison. If she does not comply, if she continues to close herself off and not engage with the proceedings, then in 14 days' time, she will be liable to go to prison.
23. I have borne in mind in determining the length of sentence that if the sentence of imprisonment is activated, and I sincerely hope it is not, then one half of the sentence will be served in custody, unless there is an early release, and the remainder will be served on licence. I therefore impose the sentence that I have just referred to.

End of Judgment

Transcript from a recording by Ubiquis
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