



Case No: K01CL370

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Date: 31/08/2023

Before :

HHJ RICHARD ROBERTS

Between :

MR RICHARD WILLIAM SILVER

Claimant

- and -

MS NICOLE SUHAN

Defendant

Mr Simon Braun, solicitor (of Perrin Myddelton) for the Claimant
Mr Adrian Davies of Counsel (instructed by Osmond and Osmond) for the Defendant

Hearing date: 31 August 2023

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

HHJ RICHARD ROBERTS

HIS HONOUR JUDGE RICHARD ROBERTS :

Introduction

1. This is the hearing of a committal application, dated 27 June 2023, by Mr Silver against Ms Suhan.
2. Mr Simon Braun, solicitor, appears on behalf of Mr Silver. I am grateful to him for his skeleton argument, dated 29 August 2023.
3. Mr Adrian Davies of Counsel appears on behalf of Ms Suhan. I am grateful for his skeleton argument, dated August 2023.
4. There is a hearing bundle. References to page numbers in footnotes below are to this bundle.

Committal application and evidence

5. The committal application is dated 27 June 2023¹.
6. Mr Silver has filed the following evidence:
 - i) Affidavit of Mr Silver, dated 30 June 2023². There is an exhibit, RWS1, which contains:
 - a) Transcript of telephone call³
 - b) Transcript of telephone call⁴
 - ii) Third witness statement of Mr Silver, dated 27 July 2023⁵. There is an exhibit RWS10⁶.
 - iii) Second affidavit of Mr Silver, dated August 2023⁷. There is an exhibit RWS3⁸, which includes a transcript of a telephone call on 13 August 2023.
 - iv) Third affidavit of Mr Silver, dated 22 August 2023⁹. There is an exhibit RWS5¹⁰.
7. There is an affidavit of Ms Suhan, dated 31 August 2023, and exhibit NS1¹¹.

¹ 3-12

² 13-14

³ 16-22

⁴ 23-28

⁵ 32

⁶ 33-34

⁷ 64-65

⁸ 66-83

⁹ 84

¹⁰ 85-115

¹¹ This affidavit and exhibit were provided on the day of the hearing and are not included in the hearing bundle.

Background

8. Mr Silver and Ms Suhan were cohabitants for two years and were engaged to be married. Mr Silver terminated the relationship in the summer of 2022.
9. Mr Silver issued legal proceedings against Mr Suhan for harassment under the Protection from Harassment Act 1997. The particulars of claim are dated 11 April 2023¹². In the particulars of claim, it is said,

“The Claimant specifically relies on the following acts of harassment:

 - (1) Despite terminating the relationship with the Defendant in the summer of 2022 the Defendant repeatedly telephoned the Claimant when asked not to and obtained access to his premises by false pretences.”
10. Mr Silver made an application for an injunction against Ms Suhan. At a hearing on 9 May 2023, Ms Suhan appeared in person before Deputy District Judge Cheunviratsakul and gave the following undertakings not to (whether by herself or by instructing or encouraging or permitting any other person):-
 - i) Communicate directly or indirectly with the Claimant whether by Social Media or otherwise except through solicitors.
 - ii) Come or remain within 50 metres of the Claimant’s home address of 55 Brookfield Mansion, Highgate, West Hill, Highgate, London N6 6AT
 - iii) Harass Richard William Silver by causing him distress, alarm or humiliation.
 - iv) Make any false and malicious allegations to the Police or any other authorities concerning Richard William Silver.
11. The order provided “And to be bound by these promises until 8th May 2024”.

Breaches of undertakings

12. Mr Silver said there had been six breaches of the undertakings given to the Court by Ms Suhan on 9 May 2023:
 - i) On 20th June 2023 the Defendant called the Claimant at 19:01¹³.
 - ii) On 20th June 2023 at 19:02 the Defendant called the Claimant¹⁴.
 - iii) On 20th June 2023 at 19:42 the Defendant called the Claimant¹⁵.
 - iv) On 16th July 2023 the Defendant served an application for a Non-Molestation Order upon the Claimant. The Defendant made a Witness Statement in support

¹² 127-129

¹³ 13

¹⁴ 16-22

¹⁵ 23-28

of the Non-Molestation Order and fails to mention either the current proceedings or undertakings that she gave to the Court¹⁶.

- v) On 13th August 2023 at 17:11 the Defendant called the Claimant¹⁷.
- vi) On 13th August 2023 the Defendant attempted to call the Claimant on numerous occasions¹⁸.

Ms Suhan's admissions

13. In her affidavit, made on 31 August 2023, Ms Suhan says,

“4. I admit that I did telephone the claimant at 19:02 and 19:42 on 20 June 2023 as stated in his affidavit and that the transcripts of those telephone conversations are correct as far as I can recall.

5. I can only apologise to the Court for making these calls in breach of the undertaking which I gave on 9 May. I can only say that I was in an extremely emotional state following the break-up of our relationship.

...

7. I also admit that I telephoned the Claimant at 17.11 on 13 August 2023 as stated in the Claimant's draft affidavit and that the transcript attached to that affidavit is accurate as far as I can recall.”

14. At the outset of the hearing, Mr Davies confirmed that Ms Suhan admitted the three breaches of her undertakings on 20 June 2023 and the two breaches on 13 August 2023.

Alleged breach arising out of Ms Suhan's application for non-molestation order

15. Ms Suhan issued an application for a non-molestation order in the Central Family Court, dated 4 July 2023¹⁹. The application included at paragraph 6.2,

“6.2 What do you want to stop the respondent from doing?

Being violent towards me or threatening me

Harassing or intimidating me

Posting or publishing about me either in print or digitally

Contacting me directly

¹⁶ 35-39

¹⁷ 64 and 69-83

¹⁸ 67

¹⁹ 42-63

Causing damage to my possessions

Causing damage to my home

Coming into my home

Coming near my home

Coming near my place of work”

All of the options except for the last option (coming near my place of work) were ticked.

16. The application was supported by a first statement of Ms Suhan, dated 6 June 2023²⁰.
17. Ms Suhan exhibited to her witness statements correspondence between her and her then solicitors, Equity Law Solicitors, and thereby waived legal professional privilege. By an email dated 21 July 2023 from Equity Law Solicitors to Ms Suhan, they say²¹,

“We are concerned that you did not disclose in your application that you had made undertakings in court in relation to another matter concerning domestic violence. In fact, in paragraph 5.3 of your application, you ticked NO in response to the question if you had any current proceedings.

Please note that your failure to disclose the material fact is a serious matter and may have far-reaching consequences including being sent to prison for contempt of court.”

18. By an email from Equity Law Solicitors to Ms Suhan, they say,

“We ceased to act for you when it was discovered that you had withheld material facts relating to the undertaking you had made in court, which if we had known, we would not have accepted your instructions because that amounted to an abuse of the process.

...

On 1st June 2023 timed at 11:45 am you sent us an email setting out the amendments that you wished to make.

At the first paragraph headed Paragraph 2, the last line you stated that ‘I therefore seek protection by way of a non-molestation order.’

²⁰ 35-39

²¹ Exhibit NS1, p. 5 to Ms Suhan’s affidavit, made 31 August 2023

You knew that you had made an undertaking in court a few weeks back involving the respondent, but withheld that information.

...

You also had ample time to withdraw your statement but did not thereby causing us and the court to falsely believe that you were in imminent danger when you were not.”

19. Ms Suhan’s application in the Central Family Court was heard by HHJ Oliver on 27 July 2023. The order states²²,

“AND UPON the Applicant not attending

AND UPON the Applicant having failed to inform the Court of the proceedings in the County Court at Central London under case number K01CL370 in which an Injunction had already been granted and undertakings given by the Applicant.

IT IS ORDERED THAT,

1. This Application be dismissed;
2. The Applicant paid the Respondent’s costs on or before 4pm before the 10th August 2023 assessed in the sum of £2,199.60.”

Submissions of parties as to alleged breach by making non-molestation application

20. Mr Braun submitted that Ms Suhan was in breach of the undertaking not to harass Mr Silver by causing him distress, alarm or humiliation by reason of making the application in the Central Family Court for a non-molestation injunction. He said that harassment could be caused indirectly and that Ms Suhan had harassed Mr Silver by making the application for a non-molestation without disclosing the fact that she had given undertakings to the County Court at Central London on 9 May 2023. Alternatively, he submitted that the making of the application in the Central Family Court was a breach of Ms Suhan’s undertaking not to make any false and malicious allegations concerning Mr Silver to authorities.
21. Mr Davies submitted that Ms Suhan’s undertakings did not involve a prohibition on her making applications to a court. He said that Ms Suhan did not attend the hearing in the Central Family Court and no findings of fact were made as to her underlying allegations, and as a consequence the Court could not determine that her application was baseless. It would appear that her application was dismissed by reason of her not disclosing the underlying proceedings in the County Court at Central London. He said that there are cases where Courts set aside injunctions that have been granted by reason of non-disclosure and then, having heard new submissions, grant the same injunction. Mr Davies further submitted that the court could not make a finding that

²² 116

Ms Suhan had made false and malicious allegations in her application to the Central Family Court because there was no evidence of this before the Court.

Findings as to alleged breach by making non-molestation application

22. I find that Mr Silver has failed to prove beyond reasonable doubt that Ms Suhan has breached her undertakings by bringing proceedings for a non-molestation order in the Central Family Court for the following reasons:
- i) The undertakings given by Ms Suhan on 9 May 2023 involve no prohibition on her making an application to the Court;
 - ii) There is no evidence before the Court that Ms Suhan made false and malicious allegations in her application to the Central Family Court;
 - iii) The fact that she did not disclose in her application to the Central Family Court that she had given undertakings to the County Court at Central London, whilst very serious and sufficient to justify the dismissal of her application, does not, in my judgment, show that the application was wholly baseless and as a consequence it has not been proved beyond reasonable doubt that the application amounted to harassment.

Sentence

23. I was referred by Mr Davies to *Hale v Tanner* [2000] 2 FLR. In this case, Hale LJ (as she then was) gave guidance on the considerations that applied when deciding the appropriate sentence in the context of proceedings under the Protection from Harassment Act 1997. Hale LJ said that the following general considerations applied:
- i) Imprisonment was not to be regarded as an automatic response to the breach of an order, although there was no principle that imprisonment was not to be imposed on the first occasion.
 - ii) Although alternatives to imprisonment were limited, there were a number of things the Court should consider, in particular where no violence was involved.
 - iii) If imprisonment was appropriate, the length of the committal should be decided without reference to whether or not it was to be suspended.
 - iv) The seriousness of the contempt had to be judged not only for its intrinsic gravity but also in the light of the Court's objectives both to mark its disapproval of the disobedience to the Order and to secure compliance with the Order in the future.
 - v) The length of the committal should relate to the maximum available, i.e. two years.
 - vi) Suspension was possible in a wider range of circumstances than criminal cases and was usually the first way of attempting to secure compliance with the Order.

- vii) The Court had to consider whether the context was mitigating or aggravating, in particular where there was a breach of an intimate relationship and/or children were involved.
 - viii) The Court should consider any concurrent proceedings in another court and should explain to the contemnor the nature of the order and the consequences of breach.
24. I considered whether the matters admitted were sufficiently serious to justify a prison sentence. I considered that there was a high degree of culpability on the part of Ms Suhan because there were persistent serious breaches of the undertakings she gave the Court on 9 May 2023.
25. I concluded that having regard to her high culpability and the very serious harm/distress to Mr Silver, a custodial sentence was the appropriate sentence.
26. I bear in mind that the term of imprisonment should always be the shortest term which will achieve the purpose for which it is being imposed. I consider the shortest period to be:
- i) 30 days in respect of the three breaches of the order on 20 June 2023.
 - ii) Bearing in mind 13 August 2023 was the second date on which Ms Suhan had breached her undertaking to the Court on 9 May 2023, 60 days in respect of the two breaches on 13 August 2023, to run consecutively to the 30 days in respect of the breaches on 20 June 2023.
27. I therefore impose a sentence of 90 days imprisonment, which I reduce by one third to give credit for Ms Suhan's admission of the breaches at the hearing on 31 August 2023. I therefore impose a sentence of 60 days.
28. I have considered whether the sentence should be suspended. I find that having regard to the fact that:
- i) These are the first breaches of Ms Suhan's undertakings given to the court on 9 May 2023;
 - ii) Although the breaches have caused Mr Silver distress and alarm, they do not involve physical violence and his distress would appear to have been of a temporary or transitory nature.
29. I find that the appropriate order of the court is to suspend the term of imprisonment of 60 days until the expiry of the undertakings on 8 May 2024.

Costs

30. Mr Davies realistically accepted that costs should follow the event. I therefore order Ms Suhan to pay the costs of and occasioned by the committal application on a standard basis.
31. Mr Silver had served a statement of costs, totalling £8,287.20.

32. Mr Davies accepted that the rates charged and the work being charged were proportionate and reasonable but submitted that a reduction of one quarter should be made to reflect the fact that the committal in respect of Ms Suhan's application for a non-molestation order in the Central Family Court had failed and this allegation had taken a large amount of the hearing time. Mr Brown did not oppose a reduction of one quarter being made.
33. I conclude that Ms Suhan should pay the costs of and occasioned by the committal application in the sum of £6,215. I order that this is paid by 14 September 2023.