

IN THE COUNTY COURT AT DARTFORD

Dartford County Court and Family Court
Home Gardens
Dartford
DA1 1DX

BEFORE:

District Judge OmoRegie

BETWEEN:

ORBIT HOUSING ASSOCIATION LTD

CLAIMANT

- and -

MISS ROSEMARY MASTERS

DEFENDANT

Legal Representation

Mr Peacock (Counsel) on behalf of the Claimant
Mr Fernando (Solicitor) on behalf of the Defendant

Approved Judgment

Judgment date: 7 July 2023

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District Judge OmoRegie:

Introduction

1. This is an extempore judgment following the trial of the Claimant's application to commit the Defendant for contempt of court. The Claimant, Orbit Housing Association Limited is represented by Counsel, Mr Peacock. The Defendant, Miss Rosemary Masters is represented by her solicitor, Mr Fernando.

Background

2. The Claimant is the owner and freeholder of the property known as 21a Mountbatten Avenue, Chatham, Kent, ME5 OJY ("the Property").
3. The Claimant granted sole tenancy of the property to the Defendant on 13 February 2006.
4. On 22 September 2020 the Claimant applied for an injunction order against the Defendant under Part 1 of the Anti- Social Behaviour Crime and Policing Act 2014.
5. On 12 October 2020 the Court granted an interim injunction order against the Defendant.
6. A copy of the injunction order appears at page 4 of the main bundle of documents prepared for today's hearing.
7. The injunction prohibited the Defendant (whether by herself or instructing or encouraging any other person) from:
 - (i) Causing or allowing visitors to cause, nuisance or annoyance to other people in the locality or to any tenants, employees or contractors at 21-23a Mountbatten Avenue, Chatham, ME5 OJY.
 - (ii) not to commit or allow members of her household or visitors to commit assault, threatening or intimidating behaviour, or verbal abuse against another tenant, occupier or visitor or anyone in the locality, or against any of our employees, contractors or agents at 21 - 23a Mountbatten Avenue, Chatham, ME5 OJY.
 - (iii) Not to play, nor allow to be played, any radio, television, CD, record or tape recording or musical equipment so loudly that it causes a nuisance or annoyance to other people in the locality or can be heard from outside the property at any time at 21-23A Mountbatten Avenue, Chatham, ME5 OJY.
8. The injunction was granted until 12 October 2022.
9. The injunction order included a Power of Arrest made pursuant to section 4 of Anti-Social Behaviour, Crime and Policing Act 2014 attached to paragraphs 1-3 for a period of 24 months.
10. A copy of injunction order was served on the Defendant on 14 December 2020.
11. The matter was listed for a return date before Deputy District Judge Bruce on 21 December 2020.
12. The hearing on 21 December 2020 was adjourned to the first open date due to the Defendant not receiving a copy of the written evidence relied upon in support of the application. DDJ Bruce ordered the Claimant to file the outstanding documents by 22 December 2020.
13. The outstanding documents were served on the Defendant on 21 December 2020.

14. The matter was listed for a final hearing of the injunction application on 15 September 2021.
15. On 6 May 2021 the Defendant was arrested for allegedly breaching the terms of the injunction granted on 12 October 2020.
16. The Defendant appeared before DJ Thomas at Medway County Court on 7 May 2021. The hearing was adjourned to 27 May 2021 with directions for the Claimant to file evidence in support of the alleged breaches.
17. The adjourned hearing was listed before DJ Wright on 27 May 2021. The court noted that both parties had been given insufficient notice of the change of venue from Medway to Maidstone County Court. The court granted the Defendant conditional bail and adjourned the matter to 5 July 2021. DJ Wright vacated the final hearing listed for 5 September 2021 and gave further directions listing the matter for a hearing on 5 July 2021.
18. On 28 May 2021 the Claimant served notice of the committal application and the evidence relied upon on the Defendant.
19. The adjourned hearing was listed before DDJ Jennings at Medway County Court on 5 July 2021. DDJ Jennings gave directions listing the injunction application and the committal application for a final hearing on 5 November 2021.
20. On 17 September 2021 the Defendant was again arrested for allegedly breaching the injunction order.
21. The Defendant appeared before me on 17 September 2021 at Maidstone County Court. I gave directions for the Claimant to file details of the alleged breaches. I granted conditional bail with conditions for the Defendant to comply with the terms of the injunction order granted on 12 October 2020. I listed the matter for a directions hearing on 7 October 2021.
22. At the hearing on 7 October 2021, the Claimant sought permission to rely on further alleged breaches covering the period 23 and 24 September 2021. I gave directions for the Claimant to amend the schedule of alleged breaches. I also provided written information to the defendant on her eligibility for free public funding and details of local solicitors she should instruct to represent and assist her at future hearings. Bail was extended until the final hearing on 5 November 2021.
23. The matter was listed for a contested final hearing on 5 November 2021 before Deputy District Judge Bruce. Both parties attended and were represented by Counsel.
24. At the hearing on 5 November 2021, DDJ Bruce dealt with the substantive application for an injunction order and adjourned the contempt application.
25. DDJ Bruce accepted allegations 3, 4 and 8 in the schedule as constituting anti social behaviour. He ordered that the injunction granted on 12 October 2020 be varied to include protection for tenants at 21-23a Mountbatten Avenue and the Claimant's employees or contractors. The injunction was extended until 5 November 2023. A copy of the injunction order as varied appears at pages 10 to 12 of the supplemental bundle prepared for today's hearing.

26. The contempt application was adjourned to the first open date after 1 January 2022 with a time estimate of 1 day. The Claimant was awarded costs of the application subject to detailed assessment with the usual public funding provisions.
27. A copy of the order dated 5 November 2021 was served on the Defendant's solicitors on 9 February 2022.
28. On 19 July 2022 the Claimant filed an application in form N244 seeking permission to rely on an amended schedule.
29. The application dated 19 July 2022 was listed before DJ Whitfield on 10 August 2022 at Medway County Court. DJ Whitfield granted permission for the Claimant to rely on the amended schedule of alleged breaches to include alleged incidents on 17, 23, 24 September 2021 and 4 April 2022.
30. This matter was listed for a hearing on 4 October 2022. The hearing was vacated due to lack of judicial availability. The matter was re-listed for a final hearing on 7 July 2023.
31. On 29 May 2023 it is alleged that the Defendant committed a further breach of the injunction.
32. The Defendant was again arrested on 8 June 2023 and brought before DJ Whitfield on 9 June 2023 for alleged breaches of the injunction.
33. DJ Whitfield gave directions for the Claimant to file a committal application setting out details of the alleged breaches by 16 June 2023. He also gave directions for the Defendant to file a statement in reply by 23 June 2023 in time for the hearing listed on 7 July 2023.
34. On 13 June 2023 the committal application, amended schedule and witness statements prepared by Rachel Chee-A-Kwai and Benjamin Haynes were filed at court and served simultaneously on the Defendant's solicitors pursuant to CPR 81.5(2).
35. On 24 June 2023, it is reported that the Defendant's neighbour, Ms Rachel Chee-A-Kwai contacted the police alleging intimidation and threats from the Defendant. She also complained of the Defendant playing loud music. The Defendant was arrested and charged with offences relating to stalking, intimidation and conspiracy to pervert the course of justice. The Defendant appeared before Medway Magistrates Court on 26 June 2023 for the alleged incidents on 24 June 2023 and was bailed on condition not return to Mountbatten Avenue with a GPS tag fitted. I understand Defendant is due to appear before Maidstone Crown Court on 24 July 2023.

The Revised Schedule of Alleged Breaches

1. On Friday 17 September 2021 at around 10-10:30am it is alleged that the Defendant knocked on the front door of a flat at 21a Mountbatten Avenue ("the Flat") occupied by Ms Chloe Atherton, and when Ms Atherton opened her door the Defendant pushed past her, entered the Flat, began searching the Flat, swore repeatedly at Ms Atherton (including calling her a 'cunt'), made threats that violence would be used against Ms Atherton and spat in her face.

2. It is alleged that immediately after the above incident and upon leaving the Flat, the Defendant banged repeatedly on the front door of the Flat and verbally abused Ms Atherton for around ten to fifteen minutes.
3. It is alleged that on Thursday 23 September 2021 at around 10:15 the Defendant shouted (referring to Ms Chloe Atherton of Mountbatten Avenue) 'She's fucking outside now!', followed by shouting 'Wait 'till she's on her own she's a fucking dead girl!'.
4. It is alleged that on Friday 24 September 2021 at around 9:30 the Defendant shouted to workmen at 21-23a Mounbatten Avenue (referring to a visitor to 21a Mountbatten Avenue) 'Watch out for her she will steal your tools. She's stolen a drill and drill bits and ladders from my son'.
5. It is alleged that on 4 April 2022 at around 14.23 to 14.25 the Defendant repeatedly struck a local resident's front door with a slab, struck a visitor to the local resident with a slab, pulled on the local resident's front door, rang the doorbell repeatedly and shouted threatening words and obscenities including "Come on heroin addict, crackhead yeah ...", "Get the old bill you crackhead cunt, go on ...", "Go and get the police cos the old bill they told me I could put my camera up ...", "Kick them out ...", "The problem is you've got heroin addicts crackheads in the property yeah ...", "fucking old dog lesbian and all ...", "I think she's got a problem ... 'cos she's a dyke innit ...", "lesbian... let's have it ...come on lesbian ... criminal damage? Well I don't know a fuck about that really ...", "You fucking lesbo .. go on lesbian ... lesbian ... lesbo ...lesbian ..." "Get them up lesbian you crackhead you junkie, go on then go on lesbian".
6. It is alleged that on 29 May 2023 at around 22:00 the Defendant assaulted a resident of Mountbatten Avenue in or around the locality of 21-23a Mountbatten Avenue by punching that resident at least four times, pulling the hair of that resident, trying to force entry into that resident's property and shouting abuse at her including (but not limited to) 'Come and fucking have it you black bitch'.

The Evidence

36. The Claimant relies on the written evidence within the main bundle and the supplemental bundle of documents prepared for today's hearing. With regards to the revised Schedule of Alleged Breaches, the Claimant relies on the allegations contained in the amended schedule filed on 13 June 2023.
37. The Claimant also relies on the evidence of Shara Richards, Chloe Atherton, Paige Atherton, Samuel Ward, Rachel Chee-A-Kwai and Benjamin Haynes.
38. The Defendant relies on her witness statement dated 13 October 2021.

39. Despite being directed to file evidence in response to the revised schedule, the Defendant has not filed any further evidence in response to the allegations.

Admissions

40. At the start of the hearing and after repeated adjournments for instructions, the Defendant through her solicitor, Mr Fernando informed the court that she admitted breach of Paragraph 5 of the injunction order as pleaded in relation to the alleged breach on 4 April 2022.
41. The Defendant denies the remaining allegations.
42. The Court therefore proceeds with its findings on the basis that the Defendant puts the claim to proof on the remaining 5 allegations.

The Legal Principles

43. The legal principles can be briefly summarised.
44. The burden of proof lies with the Claimant.
45. The requisite standard of proof is the criminal standard of proof, which is beyond reasonable doubt.
46. For each of the allegations, I must be satisfied that the Claimant has proved its case beyond reasonable doubt.
47. Any reference to the requisite standard in this judgment, refers to the criminal standard, namely, beyond reasonable doubt.
48. Given the draconian nature of the orders sought to commit the Defendant, the Defendant's Article 6 and Article 8 rights are engaged. I am satisfied on the evidence and the procedural history that the that the Defendant has had ample opportunity to respond to the allegations against her and further, that she has had adequate access to legal advice, assistance, and representation from Mr Fernando. Any orders made at the conclusion of the hearing will equally need to be proportionate.

Analysis, Findings and Conclusion

49. I turn now to the findings of contempt sought by the Claimant within the revised schedule. As stated, the Defendant accepts allegation 5 as pleaded but denies the remaining allegations. I therefore record her admission on allegation 5 as pleaded.
50. It is accepted that for an injunction order to be enforced by way of a committal application, the court must be satisfied that the injunction order was served on the Defendant.
51. I am satisfied on the evidence within the bundle of documents that the injunction order as varied by DDJ Bruce was served on the Defendant and that the Defendant's solicitors accepted service of the committal application.

52. Given that service of the injunction order dated 12 October 2020 as varied on 5 November 2020 is not in dispute, I turn to the allegations set out at pages 5 and 6 of the supplementary bundle.
53. **Allegation 1:** It is alleged that on 17 September 2021 at around 10-10:30am, the Defendant knocked on the front door of the flat occupied by Ms Chloe Atherton. It is alleged that when Ms Atherton opened her door, the Defendant pushed past her, entered the flat, began searching the flat, swore repeatedly at Ms Atherton (including calling her a 'cunt'), made threats that violence would be used against her and spat in her face. The Defendant denies the allegation. The Defendant states that she made her way peacefully into Miss Chloe Atherton's flat. She denies the allegation as pleaded.
54. In terms of my assessment of the witnesses, Ms Atherton's evidence was clear. I found Miss Atherton's evidence consistent with the written evidence filed in the bundle of documents. She responded well to robust questions put on behalf of the Defendant by Mr Fernando. Miss Master's evidence was not as fluid. She struggled to answer straightforward questions. She had difficulties regulating her emotions and behaviour when giving her evidence. Whilst I understand that she may have found the hearing difficult at times, in my view, it simply does not excuse the level of behaviour displayed during the hearing and most importantly her inability to give a credible and coherent account of why she attended Ms Atherton's flat uninvited, and the behaviour displayed during the visit and the threats made. Having considered the totality of the evidence, I accept Miss Atherton's evidence. I am satisfied to the requisite criminal standard, that the allegation as pleaded is proved beyond reasonable doubt.
55. **Allegation 2:** It is alleged that immediately after the incident on 17 September 2021, upon leaving Miss Chloe Atherton's flat, the Defendant banged on the door of the flat repeatedly, and verbally abused Miss Atherton for around 10 to 15 minutes. The Defendant denies the allegation. Ms Atherton's evidence was consistent with the written evidence. The Defendant's evidence was one of bare denial. I note that the matters alleged are similar to the to the alleged incident of repeated banging on the door of 4 April 2022, which the Defendant accepts. As previously stated, I found Ms Atherton's evidence credible and consistent with the written evidence. I therefore accept the evidence of Ms Atherton and reject the Defendant's evidence. In the circumstances, I am satisfied to the requisite standard, being the criminal standard of proof, that the alleged breach is proved as pleaded.
56. **Allegation 3:** It is alleged that on or about 23 September 2021 at around 10:15 am, the Defendant shouted, referring to Miss Atherton, "Wait till she's on her own, she's a fucking dead girl." That Defendant denies the allegation as pleaded. The Defendant's evidence on this allegation was again one of bare denial. As previously observed, Ms Atherton's evidence was clear on the alleged incidents. Her evidence was consistent with the written accounts and the evidence in the bundle of documents prepared for today's hearing. Having reviewed the totality of the evidence, I am satisfied to the requisite standard, being the criminal standard of proof, that the allegation is proved as pleaded.
57. **Allegation 4:** It is alleged that on Friday 24 September 2021 at around 9:30am, the Defendant shouted to workmen attending 21-23a Mounbatten Avenue (referring to a visitor to 21a Mountbatten Avenue) 'Watch out for her she will steal your tools. She's stolen a drill and drill bits and ladders from my son'. The Defendant denies the allegations.
58. The Defendant accepts that she has, in the past, accused Miss Chloe Atherton of stealing items from her. Ms Atherton's evidence was clear that the comment was directed towards

her. I prefer and accept the evidence given by Ms Atherton. On the evidence, I am satisfied to the requisite standard that the Defendant made the comments as alleged.

59. **Allegation 5:** The Defendant accepts allegation 5 as pleaded and as such I record her admission against the alleged breach as pleaded.
60. **Allegation 6:** It is alleged that on 29 May 2023 at around 22:00 the Defendant assaulted, Ms Rachel Akwai, a resident of Mountbatten Avenue by punching her at least four times, pulling her hair and subsequently tried to force entry into that her flat shouting abuse at her including (but not limited to), 'Come and fucking have it you black bitch'. In her oral evidence, Ms Akwai told the court that on the day in question, the Defendant had been playing loud music from her flat throughout the day. This continued late into the evening. She had difficulties put her young son to bed due to the level of noise coming from the Defendant's flat. Her partner, Ben Haynes also had difficulties getting to sleep due to the noise. Ms Akwai accepts that she went to the Defendant's flat to ask her to turn down the volume of the music. The Defendant responded aggressively, pushed her during what started as a polite conversation and proceeded to punch her repeatedly in the face and racially abuse her. The assault was witnessed by her partner Ben Haynes who called the police during the incident. She exhibited photographs of the injury sustained to statements she provided to the police.
61. The Defendant denies the allegation. She claims to have been assaulted by Miss Akwai. In her oral evidence, she explained that she heard a knock on her door which she assumed was from visitors who had come to speak to her about a bereavement. She stated that she opened the door and was punched in the face by Rachel Akwai in what she considers was an unprovoked attack.
62. I have had the opportunity to hear oral evidence from Miss Akwai, Mr Haynes and Miss Masters. The evidence provided by Ms Akwai was consistent with the statement she gave to the police on the day of the alleged incident. The account she gave of the incident was supported by the evidence of Mr Haynes. I have no reason to doubt or disregard her evidence or the evidence of Mr Haynes. Both provided credible evidence consistent with the accounts they provided to the police. There was no provocation in this case, there was no reason for Miss Masters to behave in the way that she did and I therefore that find the allegation is proved to the requisite standard, beyond reasonable doubt.
63. In the circumstances, I find that the Claimant has, on the evidence, established to the requisite criminal standard that the alleged breaches have been proved. Therefore, the Defendant is found to be in breach of the injunction order dated 12 October 2020 as varied on 5 November 2021.
64. In view of my findings, I now proceed to sentencing.

Sentencing

65. In Lovett v Wigan CC [2022] EWCA Civ 1631 the Court of Appeal gave useful guidance on sentencing for civil contempt of court. I adopt within this judgment the guidance given by the Court of Appeal in Lovett.
66. The objectives in sentencing for breach of an injunction are :
- (i) Ensuring future compliance with the order;
 - (ii) Punishment; and
 - (iii) Rehabilitation.
67. If breach is established, the sentencing options open to the court are limited. They include an immediate custodial sentence, a custodial sentence suspended on terms, adjourning sentencing, an unlimited fine, confiscation of assets or no order.
68. I am equally mindful that any sentence must be proportionate to the issues raised.
69. In July 2020 the Civil Justice Council produced a report which included draft guidelines for sentencing for a breach of anti-social behaviour. The Court in Lovett endorsed the Civil Justice Guideline and the approach of giving distinct consideration to the degree of harm and the degree of culpability in each case.
70. Mr Peacock for the Claimant and Mr Fernando both agree on the relevant guidelines and approach to sentencing set out in Lovett.
- 71. The three levels of culpability are:**
- A High culpability; very serious breach or persistent serious breaches
 - B Deliberate breach falling between A and C
 - C Lower culpability; Minor breach or breaches
72. The level of harm is usually determined by weighing up all the factors of the case to determine the harm that was caused or was at risk of being caused by the breach or breaches. In assessing any risk of harm posed by the breach(es), it is suggested that consideration should be given to the facts or activity which led to the order being made.
- 73. The three levels of harm are:**
- Category 1 Breach causes very serious harm or distress
 - Category 2 Cases falling between categories 1 and 3
 - Category 3 Breach causes little or no harm or distress
74. The Court in Lovett approved this approach, and observed that “the analytical approach based on separately identifying culpability and harm allows the court to determine a starting point for the sentence and a range within which the sentence can be adjusted taking into account additional elements which increase or decrease the seriousness of what has happened or amount to personal mitigation. It is impossible to identify all the factors of this kind which might apply. Examples of factors increasing seriousness include a history of disobedience and the particular vulnerability of any victim of the behaviour

concerned. Persistent breaches of the injunction are likely to amount to an important aggravating factor. Examples of mitigating factors include genuine remorse, ill health, and age or lack of maturity when it affects the responsibility of the contemnor. An early admission of contempt (together with an appropriate apology) will usually serve as a significant mitigating factor”.

75. Mr Peacock for the Claimant submits that the most serious breaches at paragraphs 1,2,5 and 6 fall within A1 and the breaches at paragraphs 3 and 4 set out in the schedule fall within B2. He observed that these were very serious breaches and the Defendant has not shown any remorse for her actions and no mitigating factors have been put forward on her behalf. He invited the court to note that the committal application did not ensure compliance with the injunction order. He submitted that a custodial sentence of 6 months is appropriate and justified on the facts.
76. Mr Fernando agreed with the sentencing range outlined by Mr Peacock . He accepts that the appropriate category for the more serious breaches fall within Category 1, with culpability falling within Category A. He stressed that the Defendant has pending proceedings in the criminal court which *may* result in a custodial sentence and therefore expressed concern that the Defendant could effectively be sentenced twice if the court imposes a custodial sentence. I observed at the outset that the fact that there are concurrent criminal proceedings arising out of the same issues is not a reason for this court to anticipate what will happen in the criminal court see *Lomas v Parle [2003] EWCA Civ 1804; Birmingham CC v Gill [2016] EWCA Civ 608*.
77. My first consideration is to assess the seriousness of the breaches. That involves assessing culpability and harm. I am satisfied on the findings made and the detailed evidence considered that the breaches 1,2,5 and 6 fall within A1 and that the breaches set out at paragraphs 3 and 4, fall within B2 as outlined by Mr Peacock. In terms of culpability, these were very serious breaches which included assaults, threats and racial abuse. In terms of harm, the Defendant’s actions caused physical and emotional harm to the victims as outlined in their statements.
78. The CJC proposals endorsed in Lovett outlines the starting point for Category A1 offences as 6 months with a category range of 8 weeks to 18 months and for B2 the starting point is 1 month with the Category range being adjourned consideration to 3 months.
79. In reaching a preliminary view on the appropriate sentence, I also have to take into account any aggravating factors which would result in any relevant adjustments being mindful not to double count.
80. The injunction order was made on 12 October 2020 . I note with concern that the Defendant has been arrested repeatedly for breaching the injunction order on multiple occasions since the order was made. In my view, the Defendant has not expressed any remorse for her actions. In terms of mitigation there are no persuasive factors put forward.
81. For the breaches at Paragraphs 1,2,5 and 6 in the schedule, the appropriate penalty is one of 4 months imprisonment. I am satisfied that the breaches are serious enough to cross the custody threshold given the circumstances of the case. For breaches 3 and 4, the appropriate penalty is a custodial sentence of 1 month.

82. I am equally mindful that I do need to consider a reduction for any admissions made. The Defendant admitted breach of paragraph 5 of the order at the hearing and after repeated adjournments in which her solicitor sought to clarify her instructions. She denied the remaining breaches.
83. In the circumstances, taking all of the above factors into account, the appropriate sentence I have decided to impose is 3 months imprisonment to be suspended for a period of 12 months from today on condition that the Defendant complies with the terms of the injunction order.
84. I also consider it necessary and proportionate to extend the duration of the injunction order to 4.00pm on 7 July 2024.