

IN THE COUNTY COURT AT BIRMINGHAM

33 Bull Street
Birmingham

Before HIS HONOUR JUDGE RAWLINGS**IN THE MATTER OF****WYCHAVON DISTRICT COUNCIL (Claimant)****-v-****(1) JOHN BRUCE****(2) JOSEPH GILDER****(Defendants)****MR SMYTHE appeared on behalf of the Claimant****MR PHILLIPS appeared on behalf of the Defendants****JUDGMENT****21st SEPTEMBER 2023****(AS APPROVED)**

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

JUDGE RAWLINGS:

1. I now need to decide what sanction to apply in relation to the four allegations that Mr Bruce breached the injunction, all of which I have found proved to the criminal standard.
2. The background to those breaches is as follows. On 14 March 2016, Soole J granted an injunction in respect of land known as Ridgeway Park Farm, Long Lane, Tilesford, Throckmorton, which I will refer to as, 'the Land'. The injunction required Mr Bruce, who was the registered proprietor of the Land at the time, and remains its registered proprietor, by 4pm on 8 April 2016, to comply with the requirements of enforcement notice A, and by 4pm on 16 May 2016, to comply with the terms of enforcement notice B, both of which were attached as schedules to the injunction.
3. Enforcement notice A required Mr Bruce to stop using the Land as a base for plant and commercial vehicle hire and sales, stop using the Land for importing and storing and burning waste materials and stop using the Land for siting or storage of caravans and mobile homes, or storing of building materials. Enforcement notice B required Mr Bruce to remove hardstanding waste buns and to dismantle and move portable buildings from the Land.
4. On 4 November 2016, on hearing an application to commit Mr Bruce to prison for contempt in disobeying the injunction, Mr Bruce claimed to have sold the land to a Mr Gilder, or a company owned by him. Both Mr Bruce and Mr Gilder gave evidence at the hearing on 4 November 2016, that there had been a genuine sale of the land by Mr Bruce. I rejected that evidence, and found that both Mr Bruce and Mr Gilder had lied about there being such a sale. I also found that Mr Bruce was in contempt for breaching the injunction in two ways:
 - (a) Firstly, that there were several items of non-agricultural machinery which remained on the Land, including a road sweeper, refrigeration unit, container mover, a crane, a crusher, and a trammel; and
 - (b) secondly, Mr Bruce had failed to remove buns containing waste material from the Land.
5. On 4 November 2016, I sentenced Mr Bruce to 12 months' imprisonment, but that sentence was suspended provided that Mr Bruce complied with the terms of the injunction.
6. On 9 August 2017, I found that Mr Bruce had, again, breached the injunction, in that a shredder and plant van and a large pile of waste was present on the Land. On this occasion, rather than activating the 12 month suspended sentence, instead, I sentenced Mr Bruce to 28 days in prison, and ordered him to pay the Claimant's costs. I said that, in spite of the breaches which had been proved, Mr Bruce appeared to have taken quite substantial steps towards cleaning up the Land.
7. On 24 October 2018, I found that Mr Bruce was, once again, in breach of the terms of the injunction. On that occasion, I did activate the 12 month suspended sentence, and imposed a further 28 days of imprisonment on Mr Bruce. Mr Bruce then applied for release from prison early, an application which I granted on the basis that Mr Bruce promised that he would obey the injunction going forward, including making strenuous attempts to remove the remaining waste from the Land.
8. This is therefore the fourth occasion on which Mr Bruce has been brought before me for contempt in breach of the injunction and that I have found that he has done so.

9. The allegations which I have found proved on this occasion are:

- (a) that when officers of the Council and Environmental Agency visited the Land on 3 September 2021, waste was seen actually being tipped onto the Land;
- (b) that on the same date, an extensive area of additional waste, comprising shredded frag waste and woodchip, was seen on the Land, which had not been there at the time of a previous visit on 25 May 2021, and was, therefore, fresh waste deposited at some point between those two dates;
- (c) the allegation that waste had been burnt near the Piddle Brook on the Land, was made out with an area still shown in photographs taken on 3 September 2021 as smoking, and extensive ash being present; and
- (d) during a visit to the Land on 16 November 2022, by council officials an officer saw and photographed additional waste on the Land which was not there at the time of the previous visit, on 3 September 2021.

10. Mr Phillips, who appears for Mr Bruce, makes it clear that it is Mr Bruce's position that he has not committed the first three alleged breaches of which evidence was obtained during the visit to the Land on 3 September 2021, but he accepts that he cannot challenge those findings. Mr Phillips does however say that Mr Bruce admits the fourth allegation.

11. Mr Phillips says that a confiscation order was made against Mr Bruce by Worcester Crown Court in December 2020, for some £2.1million. Pursuant to that, a receiver has been appointed over the Land. Mr Phillips says Mr Bruce has no control over the Land, as a result of the appointment of the receiver and insofar as the purpose of a sanction may be to ensure future compliance with the terms of the injunction, that cannot apply here, given that Mr Bruce no longer has any control over the Land.

12. As for the first allegation, Mr Phillips says that Pegasus who are said by the Environmental Agency to have been seen tipping waste illegally on the Land have been bringing waste lawfully, onto the Land and removing it from the Land. In support of that contention, Mr Phillips refers to a document which appears to show an exemption granted to Pegasus from bringing certain waste onto the site, and to other documents produced today, which Mr Phillips says shows that Pegasus have an exemption applying to the removal and depositing of material on the Land. If, which Mr Bruce does not accept, Pegasus were tipping unlawful waste on the Land on 3 September 2021, then that was an isolated incident in the otherwise lawful activities of Pegasus, of depositing and removing waste from the Land, which Mr Bruce was unaware of.

13. As for allegation 2, Mr Bruce's position is that the piles of material which were photographed, and were said, by the Claimant and the Environmental Agency, to be new piles of waste, were removed at the end of 2022 and beginning of 2023, as evidenced by documents showing material removed from the Land. Mr Phillips also suggested that the waste piles seen on 3 September 2021 were comprised of waste which had been spread, wrongly by Mr Bruce in the past, over surrounding fields, which had been piled up on the concrete apron, and was not, in reality, new waste at all. That would be contrary to my finding that allegation 2, relating to new waste being brought onto the Land was made out.

14. Allegation 3, Mr Phillips says, was not a deliberate burning of waste, but rather the burning of vegetation, driftwood, and trees, and any waste that might have been burnt at the same time was incidental to the lawful burning of such wood and vegetation.

15. Mr Bruce admits that piles of waste which are shown in photographs at pages 108-111 of the bundle, is fresh waste (allegation 4) which had been recently imported onto the site, as at 16 November 2022. Mr Bruce offers an apology for that, and says that a disgruntled creditor, whose bill he was not able to pay, and who ran an unlicensed waste disposal business, had persuaded Mr Bruce to allow him to deposit that waste, wrongfully, on the Land. Mr Phillips said the waste was removed shortly after the site visit on 16 November 2022. Mr Smythe asked that Mr Bruce disclose the identity of the disgruntled creditor, which Mr Phillips confirmed that Mr Bruce was not prepared to do.

16. As for aggravating features, Mr Smythe brings to my attention the following matters:

- (a) this is the fourth successful application to the court to commit Mr Bruce for breach of the injunction;
- (b) Mr Bruce breached the injunction when he was already subject to a proceeds of crime order, and award made in the Crown Court;
- (c) in mitigation, Mr Phillips has, in reality, sought to minimise what Mr Bruce has done;
- (d) Mr Bruce was released from custody early in 2019, as I have already said, on the basis that he promised me that he would immediately start removing waste from the Land, in order to purge his contempt, but even on his own case, he did not start to do that until 2021;
- (e) waste dumping on the Land has a very high commercial value. By dumping such a substantial amount of waste on the Land, the parties doing so, have avoided landfill tax of millions of pounds, and it can be expected that Mr Bruce has made a very substantial profit from facilitating the dumping of waste on the Land; and
- (f) the significant amount of illegal dumping of waste on the Land is likely to have caused significant environment damage in one form or another.

17. Mr Smythe also casts doubt on Mr Phillips' assertion that large amounts of waste have been removed from the Land at the end of 2022 and beginning of 2023, and the provenance of certain documents produced by Mr Bruce today which he relies on as evidence of that. In short, the council does not accept that Mr Bruce has arranged, as Mr Phillips says he has, in mitigation, removed large amounts of waste from the Land at the end of 2022 and beginning of 2023.

18. There are four breaches of the injunction which I have found proved, but I say now that even if Mr Bruce were right, and that, in fact, he has only deliberately breached the injunction in one way, namely, allegation 4, for reasons that will follow, the appropriate sanction, in my view, would be the same, regardless of whether only allegation 4 were proved – or as I have found, allegations 1, 2, 3 and 4.

19. I accept, given that the Land is in the possession of a receiver, that the purpose of the sanction which I impose will not include attempting to ensure future compliance with the injunction, does not apply and the purposes for which I must, therefore, impose a sanction, are to punish Mr Bruce for breaching the injunction, and also to deter others from breaching injunctions/court orders in the future. If the court did not impose sanctions for breaching injunctions, then that would send a message to parties who are subject to injunctions and other court orders, that there will be no penalty if they breach them and injunctions/court orders would, as a result not be afforded the respect by parties who are subject to them which

is necessary for the proper administration of justice. The sanction that I impose, however, must be the minimum necessary to achieve those two objectives.

20. As to allegation 1, I have found that Pegasus were seen dumping unlawful waste on the Land, in breach of the injunction. I think it unlikely, as Mr Phillips suggests, that that was an isolated incident. Environmental agency staff and the council's enforcement officers have attended the Land on a number of occasions, but there are months, rather than days between visits, and therefore, the chances of it being an isolated incident are low. I have found that allegation 2 is proved. It follows that waste was unlawfully brought onto the Land, and deposited on the concrete apron or plinth, not as Mr Phillips suggested on instructions, swept from the surrounding fields onto the concrete plinth, and was therefore waste that had already been brought onto the Land. I have found that allegation 3 is proved, which is the burning of waste, including car parts, metal and plastic on the Land. This does not allow for Mr Phillips' mitigation, that substantially, what was being burnt was wood and vegetation, with plastic and metal waste only incidentally and accidentally being mixed with it when it was burnt.

21. Mr Bruce admitted allegation 4. He could hardly have done otherwise. The photographs at pages 108-111 of the bundle clearly show mixed rubbish, which, on any view, could not have been on the site for any length of time, it looks new. Mr Bruce was unwilling to divulge the name of the disgruntled creditor that he suggested persuaded Mr Bruce to allow him to dump that waste onto the Land, absent that information, I am afraid that I do not accept that the circumstances which Mr Bruce suggests, through counsel today, caused that rubbish to be dumped upon the Land are, as Mr Phillips suggests, a disgruntled creditor persuading Mr Bruce to allow that waste to be dumped on the Land. Nor do I accept Mr Bruce's assertion (again through counsel today) that this new waste was removed shortly after it was seen during the visit on 16 November 2022, something which the claimant does not accept, and which Mr Bruce, really, produced no convincing evidence of, other than tickets, produced today that may show waste either being removed from or delivered to the Land – it is unclear which – at the end of 2022 or the beginning of 2023. So in summary, I do not consider that there are any material points in mitigation of the breaches that I have found.

22. The most significant aggravating features are:

- (a) the three previous findings of contempt against Mr Bruce;
- (b) the opportunity that Mr Bruce was given on 4 November 2016 to avoid prison by complying with the injunction and thereby avoiding the 12 month suspended sentence imposed on that occasion from being activated;
- (c) the chance that Mr Bruce was given, on 9 August 2017, when I did not impose the 12 month suspended sentence, notwithstanding that I found that he had breached the injunction again, instead I imposed a 28 day sentence, leaving the 12 month suspended; and
- (d) the promise Mr Bruce made in early-2019, when I released him from custody early, by me, that he would immediately start removing waste from his Land and abide by the injunction going forward.

23. Far, however, from removing the waste from the Land promptly after being released in early 2019, it appears that Mr Bruce delayed doing so until at least 2021, and has, according to my findings imported new waste onto the Land, between 25 May 2021 and 3 September 2021, including on 3 September 2021 itself, burnt waste on Land in or around September

2021, and again, brought new waste onto the site between 3 September 2021 and 16 November 2022.

24. For such continuous and flagrant breaches of the injunction, in my judgment, only a custodial sentence can be appropriate to meet the objectives that I have outlined, namely, to punish Mr Bruce for his breach of the injunction, and also to deter others from breaching court orders and injunctions. I consider that a member of the general public would be surprised if someone who had breached an injunction three times, been sentenced to a 12 month suspended sentence on the first occasion, on the second occasion, instead of having that 12 month sentence activated on the second occasion, been sentenced instead to 28 days, with the 12 months suspended sentence being left in place, and on the third occasion, the 12 month suspended sentence being activated, he was then released early, on a promise to abide by the injunction should be spared from a custodial sentence on the fourth occasion. I think that that illustrates why only a custodial sentence on this occasion will do.

25. The sentence that I will impose upon Mr Bruce is what I consider to be the minimum sentence required in order to meet the objectives of punishing Mr Bruce for what he has done, and deterring others from breaching court orders and injunctions. The sentence I impose in those circumstances is 12 months in prison. I say that if the only breach found by me to have occurred was the admitted allegation 4 (rather than allegations 1,2,3 and 4) the sentence would have been no different, and the reason for that is because the reasons I have given for imposing a custodial sentence, because all of the reasons connected with breaches found on previous occasions and the opportunities that Mr Bruce has had to comply with the injunction remain good, whether there were one breach of the injunction or the four breaches that I have found proved.

26. Dealing with the remaining items, I will not order that the Claimant is entitled to enter onto the Land and carry out works to remove waste from the Land. There are two reasons: (a) there is a receiver in possession of the Land, and that complicates the position. It does not allow Mr Bruce, apart from being sentenced to a period of imprisonment, to take steps, himself, to remove waste from the Land and the receiver in possession of the Land, who is in the process of trying to sell it, may end up resolving the position through that disposal process; and (b) Mr Phillips has brought to my attention to a statutory power available to the council, to enter the Land and carry out those works, so granting the order sought would add nothing to the powers that the council already has. In those circumstances, I decline to make the order sought.

27. I will not discharge the injunction, notwithstanding that a receiver is in possession of the Land. In my judgment, there is still the possibility that Mr Bruce may carry out breaches of the injunction, notwithstanding that he is not entitled to be in possession of the Land and Mr Bruce remains the registered proprietor of the land and may seek to dispose of that interest. No application has been made to discharge the injunction, Mr Phillips has simply asked today for such an order to be made. If Mr Bruce wants to apply to discharge the injunction he should make an application in the usual way, together with supporting evidence, giving the council an opportunity to respond having considered all the implications of discharge.

28. Finally, I will extend the order preventing the sale or leasing of the land by Mr Bruce, as requested by Mr Smythe on behalf of the council, notwithstanding that a receiver is in possession of the Land. There is no danger, in my judgment, of Mr Bruce being found in future to be in contempt of court for breaching the injunction for what happens on the Land,

unless it is clear that it is the actions of Mr Bruce that have caused the breach of the injunction to occur. So there is no risk, in reality, posed to Mr Bruce by continuing the order preventing sale or leasing of the land by him. Insofar as Mr Bruce is unable, in any event, to bring about a sale or leasing of the land because of the appointment of the receiver over it, that, to my mind, does not represent a good enough reason not extend the order that I have made.

This transcript has been approved by the Judge