

IN THE COUNTY COURT AT CLERKENWELL AND SHOREDITCH

Case No. K02CL755

Courtroom No. 11

The Gee Street Courthouse
29-41 Gee Street
London
EC1V 3RE

Monday, 20th May 2024

Before:
DISTRICT JUDGE BELL

B E T W E E N:

THE LONDON BOROUGH OF SOUTHWARK

and

PATRICK THOMAS

MR HOAR appeared on behalf of the Claimant
NO APPEARANCE by or on behalf of the Defendant

JUDGMENT

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DJ BELL:

1. The counsel on behalf of Southwark makes an oral application for me to proceed in the absence of Mr Thomas at this adjourned hearing to consider the penalties to be imposed in relation to his breaches of an injunction. The matter was last before me on 24 April to consider the penalties to be imposed. At that hearing, I raised concerns regarding whether Mr Thomas was aware of the listing of that hearing given that there had been no response from him to documents sent.
2. I have had the benefit of seeing the witness statement from Mr DeMello[?] who refers to attending at Mr Thomas' mother's property on 10 and 11 May. On 11 May, he spoke to the defendant, whom he recognised from a photograph, through an upstairs window. The defendant refused to come to the door to take the documents and they were left on the front doorstep. Mr DeMello states that they were shortly thereafter, no longer there. I am satisfied that that is personal service and he is aware of today's hearing. That is reinforced by the attempts that Southwark have gone to bring these matters to Mr Thomas. They sent him an email on 10 May. They have also sent him text messages to a phone that he uses with photographs of the various orders. As such, in my judgment, Mr Thomas is well aware of today's hearing and the previous orders that I have made which included, in each case, warnings to him that if he did not attend, the Court may proceed in his absence.
3. It is, of course, correct, as Mr Hoar brings to my attention that committal applications are quasi-criminal in nature and, as such, Courts take great care as to proceeding in the absence of the defendant given the threat of a penalty of imprisonment being imposed. Cobb J set out in *Sanchez v Oboz and Oboz* [2015] EWHC 235 (Fam) a useful checklist of the matters for the Courts to consider in determining whether to proceed:
 - a. The first is whether the respondent has been served with the relevant documents including the notice of the hearing. As I have addressed, he has.
 - b. Secondly, whether the respondent has had sufficient notice to enable them to prepare for the hearing. The documents were served some nine days ago at the latest. It may well be that Mr Thomas had earlier notice of my findings. He has not raised any issues regarding lack of time to prepare.
 - c. He has put forward in relation to the third issue, no reason for his non-attendance.
 - d. The fourth issue is whether, by reference to the nature and circumstances of the respondent's behaviour, they have waived their right to be present. Whilst not in

relation to this hearing, I am aware that in respect of previous hearings, he has indicated that he does not intend to be at court.

- e. Fifthly, whether an adjournment would be likely to secure the attendance of the respondent. This is, of course, an adjourned hearing to try and give him the ability to attend. There is also a warrant for his arrest but that has not led to him being brought to court.
 - f. Sixthly, the extent of the disadvantage of the respondent in not being able to present their account of events. Of course, I have dealt with the issues of fact and do appreciate the respondent, of course, can attend to put forward issues of mitigation and the like and, as such, of course, there is a disadvantage to the respondent.
 - g. Seventh, whether there is undue prejudice caused to the applicant by any delay. I do not think that there would be.
 - h. Eighth, whether undue prejudice would be caused to the forensic process. Again, I do not think that that would apply to the detriment here of either party when considering the overriding objective.
4. This is a case that has already been adjourned once to ensure Mr Thomas has notice. Warnings have been given to him. He repeatedly does not attend at hearings often indicating that he does not intend to attend. In my judgment, given that state of affairs, it is right to proceed in his absence.

(Submissions continued)

5. I am concerned today with the imposition of penalties in relation to Mr Thomas's breaches of an injunction dated 2 August 2023. Mr Thomas attended at the hearing when the injunction was made but has not attended at any subsequent hearings. The claimants raised that there were breaches of the injunction and an application for committal was made. The matter came before District Judge Beecham who gave directions regarding the service of an amended application and provisions on service.
6. The matter came before me on 9 April when the defendant did not attend. I was satisfied that he had been served and had chosen not to attend and I read the evidence and heard evidence from a number of witnesses on that day and made findings in respect of a number of incidents. I made findings and found proved five incidents that led to a number of breaches of the injunction. The order that was produced as a result of that hearing set out in detail the findings

that I had made and the relevant breaches of the injunction. It also set out warnings to Mr Thomas regarding attending at the next hearing, it being adjourned to deal with the penalty issue and a bench warrant was issued.

7. The defendant was served in the manner that the Court had set out but it was unclear whether, because there had been no response from Mr Thomas and, as I was informed, he had left the property, effectively giving up possession, whether he had received those documents. The matter was adjourned to today and I am satisfied, as I have already indicated in my first judgment, that he has been served and he has chosen not to attend.
8. The incidents that I found proved occurred on 18 October 2023, 20 November 2023, 5 February 2024, 9 February 2024 and, again, on 9 February 2024. They relate to:
 - a. on 18 October, 20 November, 5 February and 9 February breaching of clause 3 of the Injunction with prohibited the defendant from making threats to harm and/or kill the claimant's employees and agents;
 - b. on 18 October, 20 November, 5 February and 9 February breaching of clause 4 which prohibited the defendant from "*...using language or behaviour in person or through telephone calls, voicemails, emails or any other communication that causes harassment, alarm or distress to a member of the claimant's staff and/or its agents*".
 - c. Incidents on 18 October and 20 November breaching clause 8 which prohibited the defendant from "*...preventing the claimant's employees and agents from accessing the property through threats or acts of violence, harm or abusive language when access is required for the purpose of enabling the claimant to carry out its contractual repairs and obligations*".
 - d. Two incidents on 9 February where he came to an office at 132 Queen's Road, London, SE15 2HP in breach of clause 11 in being prohibited from attending without an appointment to attend.
9. I must consider each breach. It is well-established that the purposes of dealing with breach of an injunction are to ensure future compliance with the order, punishment and rehabilitation. The Court has a number of options open to it in terms of committal to prison, a suspension, adjournment for consideration or a fine and no order. Of course, the maximum that I can impose is two years' imprisonment and custody should be reserved for the most serious breaches or where other methods of securing compliance with the order have failed.
10. The Court of Appeal in a number of co-joined appeals in *Lovett v Wigan Borough Council and Others* [2022] EWCA Civ 1631 stated that the starting point for the Court to consider in

imposing penalties is the appendix to the Civil Justice Report on anti-social behaviour injunctions which set out a set approach for the Court to consider.

11. It is clear in this case that the most serious breaches relate to those in breach of clause 3, that is the threats to harm and/or kill. In each of these cases a direct threat was made, on 18 October, “I will bring a knife and stab the lot of you”, 20 November, “If I was to kill you now..., 5 February, “Watch your back, I will kill you and then...” and on 9 February, “Someone would have to die...”.
12. As Mr Hoar for the claimant has rightly brought to my attention, these are threats made by Mr Thomas in light of his unhappiness with the Local Authority and the way in which they were dealing with his concerns regarding his housing. Whilst he may not have intended to inflict violence, he undoubtedly made threats to employees of the Local Authority which had impact on them. Mr Hoar, in terms of the starting point as to culpability, places them in Category B and, as to harm, in Category 2. Whilst they are threats of violence, I think it is right, in this case, to put them into Category B. They were threats to make people fearful. Clearly, they caused alarm and distress.
13. I place them in Culpability B and Category 2, the starting point is one month custodial sentence with a category range of adjourned consideration to three months custodial sentence. They are, in my judgment, four incidents of serious threats which places them at the top of the range. They are over a period of time albeit against a backdrop of Mr Thomas’ unhappiness with the Local Authority. They demonstrate a series of breaches over a period of time, in effect, targeting people who work for the Local Authority.
14. There have been no factors of mitigation raised. Mr Thomas has not sought to attend to put any forward save that I do take into account that clearly, this arises out of his housing position and his unhappiness with the Local Authority over that in respect of a property which during the course of this committal application, I understand that he has given up and has moved out of.
15. In respect of those issues of threats, I impose a 12-week sentence for each breach to run concurrently. I will come back to the issue of suspension.
16. In relation to the second category, which is the breaches of clause 4, these are, in my judgment, of a lesser extent. Clearly, there is a very close overlap between these matters and the issues that I have already dealt with. In effect, they are the same breach in relation to the incident on 18 October. There is a separate issue on 20 November where there is also an issue of “I’ll slap you” which perhaps is a lesser threat but more of a harassment. Again, very similar

overlap on 5 February 2024 and on 9 February 2024. As such, I believe that those issues are all caught by the penalties that I have dealt with, each being a breach of clause 3, and considering the totality, in effect, I would sentencing for the same issue.

17. As to the breaches of clause 8, those are two issues in relation to prevention of work. However, the issue again is the same threats that are breaches of clause 3. It is the threats being made that left them. Again, it would be, in effect, double sentencing.
18. There are separate breaches though in relation to attending at the property on two occasions. One led to issues for which I have already imposed a penalty. One was an earlier sighting of the defendant. I appreciate that coming to the offices led to separate issues for which I have already imposed a penalty. Of itself, I do not consider that merely attending would lead to a custodial sentence. It is a much lower issue of culpability and harm taking it as a separate breach and it would be within Category C(3). I have already imposed a penalty for what occurred when he did attend.
19. There is no reduction because there has been no admission.
20. As to whether the custodial sentence should be suspended. [The last incident is in February. It is, in my judgment, breaches that have arisen out of this relationship that the parties had regarding the property and the defendant's unhappiness with the actions of the claimant. Whilst there may be issues of some unfortunate language in his communications with the solicitor, in relation to the injunction and its aim to protect people there have not been any other matters brought to my attention since February. The defendant has given up his property. Considering those, in my judgment, the penalty should be suspended for 12 months on compliance with the order.

End of Judgment.

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