Neutral Citation Number: [2019] EWHC 247 (QB)

Case No: HQ17X04688

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15th February 2019

Before :

HIS HONOUR JUDGE BLAIR QC
Sitting as a Deputy Judge of the High Court

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Between :

Basingstoke & Deane Borough Council	**Claimant**
- and -	
(4) William Stokes	**Defendants**
(5) Marie Stokes	

- -
- -

David Lintott (instructed by **Wendi Batteson, of the Claimant**) for the **Claimant**
Alan Masters (instructed by **Deighton Pierce Glynn**) for the **4th and 5th Defendants**

Hearing dates: 4th February 2019

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JUDGMENT

HHJ Blair QC :

The Claimant's application

1. The Claimant makes application to commit to prison the 4th and 5th Defendants for contempt of court breaching an injunction imposed by Martin Spencer, J. on 21st December 2017.

Service of the Claimant's application

2. The 4th and 5th Defendants, through their counsel – Mr Masters, take the point that the committal application was not personally served on them, as is required by the Civil Procedure Rules Part 81.10(4). In fact they both attended court, are represented by Solicitors and Counsel and have made an application for the variation of the injunction. However, it is argued that the Rules provide important protections and safeguards for Defendants where such serious potential sanctions are being sought; that the Claimants are very well aware of Rule 81.10(4) from previous litigation; and they should not be permitted to ignore the Rules.

3. I indicated during the course of argument that because the 4th Defendant was spoken to by a representative of the Claimant on the telephone about this application while he was away in Ireland it was my preliminary view that it was 'just' to dispense with service of the papers on him pursuant to Rule 81.10(5)(a). He has suffered no material prejudice by the fact that he was not personally served with the committal application papers. He has had sufficient and adequate notice of the application and of all the relevant paperwork in advance. He is represented and has been fully able to respond to the application. For obvious reasons his counsel has not pushed this point further and I therefore make an order dispensing with the need for personal service.

4. By contrast, there is no evidence that the Claimant has ever had any direct contact with the 5th Defendant in respect of the application to commit her to prison, let alone personally serving her with the papers. I indicated to the Claimant's counsel that I would require some persuading that it would be 'just' to dispense with personal service on her under Rule 81.10(5)(a) in those circumstances. The Claimant has not pursued this further. Accordingly, the application to commit her to prison for contempt is dismissed because there has not been proper service of the application on her under Rule 81.10(4).

The injunction

5. The relevant part of the *ex parte* injunction against the 4th Defendant (and others) was in the following terms:

> " THE INJUNCTION
>
> IT IS ORDERED THAT UNTIL TRIAL OR FURTHER ORDER WHICHEVER IS THE EARLIER:

> 2. The Defendants, by their servants agents or otherwise, be restrained from causing or permitting the further deposit of hardcore or other materials on upon the land marked upon the Plan annexed to this order("the land");
>
> 3. The Defendants, by their servants agents or otherwise, be restrained from causing or permitting works relating to or creating a residential use on the said land;
>
> 4. The Defendants, by their servants agents or otherwise, be restrained from causing or permitting entry on to the land of any caravans, touring caravans or mobile homes;
>
> 5. The Defendants, by their servants agents or otherwise, be restrained from causing or permitting the use of any caravans, touring caravans or mobile homes currently present on the said land, save those that are already in use.
>
> 9. ...In respect of Defendants 1-5 they shall be treated as properly served by placing the Claim form, application notice and injunction in clear plastic envelopes nailed to a stake or gatepost, or other prominent location on…Plot 6 in respect of Defendants 4 and 5.
>
> 11. There be liberty to apply to the Defendants to apply to vary or discharge this order…
>
> 12. A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement."

Service of the injunction, his state of knowledge and response to the alleged breaches

6. There is evidence in the First Affidavit of Mark Fletcher on behalf of the Claimant explaining how he served the injunction on the 4th Defendant on the 22nd December 2017. Not only was it affixed as required by paragraph 9 of the injunction (see above), but he deposes (at paragraph 6 of his Affidavit) that he hand-served it on the 4th Defendant and explained it. In his 3rd Witness Statement (at paragraph 6) he expands on this, saying that before fixing the injunction on the gatepost he personally served a copy on Mr Stokes and explained any further works undertaken would breach the injunction dated 21 December 2017. Mr Stokes then observed him fixing it to the gatepost.

7. The Claimant has provided a schedule of 10 alleged breaches of the injunction. I indicated at an early stage of the hearing that I did not consider there to be sufficient evidence to establish the first of those allegations: the deposit of hardcore on Plot 5 by the 4th Defendant, his servants or agents. The Claimant did not pursue this further in argument.

8. The 9th and 10th alleged breaches are patently established on the photographic exhibits – the 3 caravans which had been on Plots 6 and 7 in December 2017 have been replaced by 3 other caravans. The 4th Defendant does not dispute the alleged breaches (save in respect of there being one other caravan on the site, he says, for only one night when his sister had to take an infant to hospital). Instead, Mr Stokes sought to persuade me that it would be disproportionate to punish him for contempt of court for breaching the injunction when these were replacement caravans following various problems with the previous ones. During the course of argument I expressed my agreement with that proposition and the Claimant has not pressed the point further. I make it clear, however, that these were breaches of a court order and whilst no sanction will be imposed on this occasion, the Court will not be so understanding if it happens again. The proper course to take if there is a problem of that sort is to seek the Claimant's agreement to a variation of the injunction enabling an exchange of one caravan for another.

9. The 2nd to 8th alleged breaches were conceded to be breaches by the 4th defendant or by those for whose actions he is legally responsible. The evidence and submissions made to me were all directed to questions of the seriousness of the breaches; whether I need impose any sanction for them at all; but, if so, what level of sanction that should be and what required steps need be taken.

10. It was conceded before me that Mr Stokes knew, when he moved onto the land on 9th December 2017, that the rear part of his plots was already the subject of an injunction forbidding the laying of hardcore, etc. That injunction had been granted by a Circuit Judge at Reading County Court in 2014. Indeed, the part of Plots 6 & 7 originally chosen by the 4th Defendant to position his 3 caravans upon was selected precisely so as to avoid breaching the earlier injunction. He had been aware that the County Court injunction had not incorporated that portion of the plots which was nearest to Cufaude Lane.

11. In his unsigned witness statement Mr Stokes explains that he is an Irish Traveller; he had next to nothing by way of formal education as a child; he is unable to read and write; he has 5 children (although he then names 6 children - 5 sons and a daughter) 3 of whom have serious and time-consuming issues with their health. In paragraph 11 he says that there have been a few visits of council officers to the site but in none of them have they to his "knowledge had any real conversation with us or talked about the injunction or indeed spoke to us to explain anything or said to stop doing anything we were doing." He repeats this in strong terms in paragraph 16 and in paragraph 25 says that: "I have never been served with any injunction proceedings".

12. In the witness box on oath Mr Stokes said that his witness statement (prepared for him by his solicitors) had been read over to him on the telephone and he confirmed it was correct. He accepted that when he and his family had moved onto the site in early December 2017 he put 3 caravans at the front of his plots because he knew there was an injunction covering the rear. He then said he thought he could put hardcore down towards the rear of the plots because Mr Eastwood (the 1st Defendant) had done so; he agreed he didn't consult with anyone; and he said he thought there was no harm in it: "Now I know I shouldn't've. Now I am paying for it…Now I know I should have asked more questions."

13. When cross-examined Mr Stokes agreed that Mark Fletcher of the Claimant had been down at the site. He explained that he was not now able to recall the dates and times. When it was put to him that he was told on 22nd December 2017 that additional development was not allowed because of the High Court injunction he replied: "I remember him telling me to do no more work, but I didn't know for how long to be honest with you."

14. Mr Stokes was asked to respond to the evidence from Mark Fletcher about a visit on 20th September 2018, when a letter from the Claimant dated 19th September 2018 asserting breaches of the injunction and requiring compliance to avoid committal proceedings was read out aloud to him at the site. His response was: "I'm going to be honest. I was having problems with my sons and my daughter and I didn't know day from night. I did promise I'd remove the hardstanding when I get a chance and I promise I will when I get a chance. Every time he came down I co-operated with him and he did with me. He was very very fair to me. I don't know the date he came." He went on subsequently to say: "Give me a couple of weeks and I will take it up. I should have done this before – I'm very very very sorry." In re-examination his counsel tried to invite him to say that this was a particularly bad time of year to undertake groundworks to remove the hard surfaces on his plots, but instead Mr Stokes simply stated: "If it's possible to give me a bit of time I'd appreciate it. I will try to do it in a couple of weeks but if I could have a couple of months."

15. No application to vary or discharge the injunction was made by the 4th Defendant until the 28th January 2019 – i.e. more than 13 months after the injunction was served and just one week before the listed hearing of the Claimant's application to commit him to prison for breaches of the injunction.

16. The 4th Defendant is almost certain to have known that someone who is referred to as MMT in these proceedings (and who I believe is related in some way to him) had made a previous unsuccessful application to the Court for a variation of this injunction. That variation application was heard by Nicklin, J. on 5th February 2018 (Neutral citation number [2018] EWHC 179 (QB)). In a very detailed judgment Nicklin, J. refused a variation of the injunction to permit MMT to continue in occupation of one of the nearby plots.

17. Mr Masters (for the 4th Defendant) argues that there are now different considerations to be taken into account when assessing the prospects of Mr Stokes successfully appealing the Claimant's refusal of planning permission for Plots 6 and 7 (to be heard by a Planning Inspector in April 2019), as compared to Nicklin, J.'s assessment when dealing with MMT's application a year ago. He argues that the highways objections are capable of resolution by providing a different access and all other objections are all fully resolvable through the imposition of conditions.

18. Mr Lintott (for the Claimant) argues that there are no greater prospects of a successful grant of planning permission on appeal for Mr Stokes now than the position of others in the past at this location. Moreover, he observes that Mr Stokes cannot plead in his favour the consideration of his human rights in seeking a variation of the injunction (unlike MMT who was able to urge that on Nicklin, J.) because Mr Stokes and his family are still able to remain living on the front of the plots under the terms of this interim injunction pending the conclusion of his planning appeal and this litigation.

19. Mr Masters argues that the breaches are not serious ones in the scheme of things. He urges me to conclude that Mr Stokes' culpability is low because he was not deliberately acting in defiance of the injunction. He is unable to read; he had many other things demanding his attention; he did not really understand the legal position; he has admitted his breaches and apologised profusely; he has not sought to argue the indefensible. By his evidence he wishes to purge his contempt.

20. Mr Lintott argues that these were serious and deliberate breaches of an injunction which was explained to him on successive occasions when Mr Fletcher spoke with him – on 22nd December 2017, 20th September 2018 and then again on 24th October 2018. On the latter occasion Mark Fletcher's evidence is that Mr Stokes told him that he had not had time to remove the hardstanding which he had laid but that he still intended to do so. It is argued that Mr Stokes has flouted the court's order and repeatedly made promises to remedy the position but in fact done nothing at all until after these committal proceedings were launched. It was only then that he sought a variation of the injunction in order to try to regularise what he had been up to. He promises to put it all back as it was, but he has still not restored the land to the pre-injunction condition.

My conclusions

21. Whilst Mr Stokes may not have had a formal education he is not unintelligent. He runs a business cleaning driveways and paths. He breeds and sells horses. I reject those parts of his evidence where he said he did not know about this injunction or its terms. I accept Mark Fletcher's evidence in relation to these matters. Mr Fletcher was keeping a clear record of what was happening on his visits to the site and his interactions with Mr Stokes as part of his job. Mr Stokes was inconsistent – his oral evidence involving concessions which were contrary to firm statements of denial in his witness statement. He was utterly unpersuasive as to his lack of understanding and accepted, in any event, that when he moved onto the site he knew that there was a preceding injunction preventing him from developing the parts of his plots which he has now developed. His initial positioning of previous caravans was carefully chosen so as to abide by that injunction and I reject the suggestion that he was ignorant of the terms of this injunction.

22. I find that he has deliberately and wilfully breached the Court's orders so as to serve his own interests. It was only once the Claimant pursued this application to commit him to prison that he tactically decided to make an application for a variation of the injunction. The variation application is totally without merit. No part of his evidence even begins to provide a serious reason for the injunction to be varied. I reject that application.

23. The breaches are multiple in number (7 breaches of depositing and spreading hardcore and concrete) and were successive cynical attempts to try to improve his position for the pending planning appeal. The extent of his encroachment is significant and flagrant. The Court will not countenance such wilful disobedience of its orders and permit him to ignore them with impunity. There is an important overarching public interest in ensuring that court orders are respected and obeyed.

24. No evidence was adduced to support counsel's contention that requiring the imminent restoration of the land to the pre-injunction position would be seriously detrimental to the environment. To delay the restoration of the land for months and months – until after a planning inspector has made a determination on the current planning appeal would be to ignore the force of the injunction and the importance of obeying court orders. It would serve to condone the 4th Defendant's actions and give the impression that he can manipulate events to serve his own ends with impunity.

25. Had Mr Stokes not made the apologies he did at the hearing, both from the witness box and through his counsel, I would have committed him to prison for 8 weeks (56 days). Because he did make concessions, admissions and apologise I am prepared to ameliorate that sanction by reducing it to a committal of 7 weeks (49 days) in custody and also to suspend it until 1st April 2019. It is suspended on condition that by midday on 7th March 2019 he removes all deposits of hardcore, concrete and other materials from Plots 6 & 7 Cufaude Lane, Bramley, Tadley, Basingstoke, Hampshire, RG26 which have been placed there since 22nd December 2017 and are shown on the plan marked MFL13 appended to the first affidavit of Mark Fletcher and identified in the Key as Breach Areas 1, 2, 3, 4 and 5.

26. The 4th and 5th Defendants have the benefit of Legal Aid representation in responding to the applications to commit them for contempt.

27. Having heard submissions on costs I direct that the 4th Defendant do pay the Claimant's costs on the application to commit, to be assessed if not agreed, subject to the usual order concerning the assessment of the Defendant's financial means for someone covered by a Legal Aid Representation Order. There will be no order as to costs in respect of the 4th Defendant's application to vary the injunction.

28. As for the costs position in relation to the 5th Defendant, there will be no order as to costs, both in respect of the application to commit and the variation of injunction application.