

IN THE COUNTY COURT AT LUTON

Case No: F01RG631

Courtroom No. 4

Luton Justice Centre  
Floors 4 & 5,  
Arndale House  
The Mall  
Luton  
Bedfordshire  
LU1 2LJ

10.09am – 10.25am  
Thursday, 12<sup>th</sup> November 2020

Before:  
HER HONOUR JUDGE BLOOM

B E T W E E N:

JOHN HICKS

and

FAIZA PERVAIZ and KAMIL PERVAIZ

MS N INNES appeared on behalf of the Claimant  
NO APPEARANCE by or on behalf of the Defendants

JUDGMENT  
(For Approval)

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HHJ BLOOM:

1. This is a sentencing hearing. At the last hearing, which was on 13 October, the defendant, Ms Pervaiz, did not attend. The claimant was represented by Ms Innes, counsel, who is also before me today. At that hearing, I was satisfied on the criminal standard of proof that the defendant had breached the order of 25 October, whereby she was enjoined to allow the claimant's agents access to 9 Yeoman Place, Woodley at a date which they requested, which was 1 November 2019. The purpose was to inspect, maintain, and repair the gas installation if necessary, and to prepare an energy performance certificate. Regrettably, as I say, I found established to the criminal standard of proof that Ms Pervaiz had not done that. I adjourned it for sentence to today.
2. In the background there were letters from Ms Pervaiz saying that she refused to accept the authority of this Court, this is the County Court, because she asserted there was an outstanding appeal in the High Court. She was mistaken about that in that she had made an application for permission to appeal an order I had made refusing her permission to appeal the injunction. My order was then in fact overtaken by an order of His Honour Judge Rochford, where he dealt with my paper refusal in an oral hearing and refused permission to appeal. She was notified by the High Court on 3 November 2020 in writing that there was no valid application before the High Court, and, therefore, there was no reason for her any longer to assert non-attendance today. She was served with a copy of my order requiring her to come to court today by post. I have checked the rules and given that this is not actually application for committal, which has already been dealt with, but the hearing for sentence, it would appear that she does not have to be served personally, and, therefore, it is sufficient if she was served by post. She was served at her home address.
3. She has clearly received the order requiring her to attend today. She has written again and says, "Again referring to the permission to appeal and the outcome of that will decide whether the order of 21 October is enforceable". Therefore, I am quite satisfied, having now seen those letters, she has had service of the order and knows about the hearing today, and, of course, having sent those letters to the court on 3 November, as I said, the appeals office of the High Court wrote to Ms Iqbal, they call her but that does not make any difference, at 9 Yeoman Place to say that:

"Further to your previous correspondence in which you are seeking to issue an appellant's notice requesting permission to appeal an order of Her Honour Judge Bloom, dated 6 December 2019, there

was an oral hearing before His Honour Judge Rochford on 28 January 2020 when he refused an application for permission to appeal, having been refused on the papers by Her Honour Judge Bloom, your appellant notice cannot be issued in this office”.

Therefore, Ms Pervaiz should have been in no doubt that there was nothing outstanding, and, therefore, her position was untenable. Therefore, I am quite satisfied she has been served, and, therefore, has chosen not to attend again today.

4. In those circumstances, regrettable as it is, I proceed to sentence her in her absence. I have considered whether to issue a bench warrant, but I have to take into account this case has now been going on for a year nearly, counsel has dutifully attended, it is the second time counsel has attended in relation to this committal application. I am also mindful of the fact we are talking about a matter where proportionality must come into play, and this, of course, is not a case where she is committing nuisance to neighbours, but where she is refusing access for a very simple reason. This is a landlord who wants access to his property in order to check that the gas installations are working and in proper condition, and also to do an EPC, and it is plainly wrong for me to adjourn this yet again. Therefore, I am going to proceed to consider sentence.
5. I take into account the sentencing guidelines, which have been published, and although they are in relation to criminal behaviour orders they are also used in relation to anti-social behaviour orders. It seems to me that they give me some starting point in relation to considering what is the culpability and harm, and, therefore, has the custody threshold been crossed such that I should consider imposing a sentence of prison as opposed to a fine?
6. I am just pausing on a fine. Because Ms Pervaiz has chosen not to come to court I have no evidence about her finances, and, therefore, it would be very difficult for me to know whether she actually could pay a fine. I would also point out that the purpose of the adjournment was in part to allow her to purge her contempt by permitting the claimant access, and that remains the position that she can, of course, at any time purge her contempt by permitting access to the claimant.
7. However, looking at the guidance that is offered in relation to offences of breach of anti-social behaviour orders, the guidance is to look at culpability and harm. As far as culpability is concerned, this is plainly a serious and persistent breach. It is at the top end. She has had a year to comply with this Order . The order was made in October 2019, and there is simply an outright refusal to allow the claimant to go into his property to do something incredibly simple.

8. As far as harm is concerned, of course this is not in the most serious case in terms of harm in the sense that there is no victim in the sense of an individual who has been harmed, and there is no serious criminal or anti-social behaviour. However there is harm in the sense that plainly it is distressing for the landlord not to be able to do this, and there is an underlying risk because it is not known what state the gas installations are in. The very fact that this lady refuses to let people in is a concern. In more recent correspondence she appears to suggest she has had a boiler removed, and that of itself is a cause for concern because no one knows whether she has done it safely or not. Therefore, there is a degree of harm, albeit not at the top level, but I would say it is somewhere around the top of Category 3 or the bottom of Category 2.
9. If one then considers whether the custody threshold has been met, it has. If you have culpability which is in the top level for serious and persistent breach. Even if one takes it as a Category 3 the starting point is 12 weeks' custody. Now plainly, having said that, it would be in my view excessive to sentence this lady to prison for 12 weeks given other factors, which I will come on to now.
10. I am not aware of any other breaches or difficulties, but what I am aware of is a number of aggravating factors which is that she has failed to come to court at all, or take part in these proceedings in a meaningful way since the end of last year. She has offered no mitigation. There is no evidence before the court that she is ill or unable to deal with these matters. She has, as I say, filed some documents. She sought to appeal, she has written to the court, she is clearly aware of the proceedings, and is deliberately choosing not to come. There is some suggestion she may be caring for her son, who is an adult, but may have some problems, but I am not aware of the details because, as I say again, she has chosen not to attend court and give me the necessary information. I cannot reduce her sentence because she has accepted that she is guilty because, again, she has chosen not to come to court or participate.
11. In all those circumstances, I am quite satisfied that the only sentence I can impose is a sentence of imprisonment, and it seems to me that in this case the court should impose a 14-day prison sentence. However, I will in the first instance suspend it on terms that she complies with the injunction that was made on 25 October of last year when she was ordered to permit access to this property.

**End of Judgment**

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