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IN THE LUTON COUNTY COURT
(Sitting at Luton)

No. G00LU644

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

Thursday, 18 March 2021

Before:

HER HONOUR JUDGE BLOOM

B E T W E E N :

BHPA LTD

Claimant

- and -

(1) MR MOLLOY
(2) MRS MOLLOY

Defendants

MS J. MOATE (of Counsel) appeared on behalf of the Claimant

MR P. McLEISH (of Counsel) appeared on behalf of the Defendants.

J U D G M E N T

JUDGE BLOOM:

1 This is an application to commit by BHPA Ltd against Mr Declan Molloy and Mrs Sandra Molloy in respect of breaches of an order that was initially made on a without notice basis against both defendants. The background is that Mr and Mrs Molloy have been the tenants of the claimant for some time and occupy a property at 83 Barford Avenue in Bedford. They share a communal pathway with number 83, who is occupied by Ms Lee, her partner, Mr Peters and their daughter. For many years, it would appear there have been difficulties in that relationship. I say no more than that.

2 Since 2019, matters appear to have come to a head, certainly as far as Ms Lee is concerned and as a result of her allegations against the Molloy's, BHPA decided to issue injunctive proceedings which form the basis of this case.

3 The application came on without notice on 17 June, when an injunction was made against both defendants. The wording of that injunction, to which I will return, was that they were each forbidden from using racist, offensive, or abusive language or gestures against (a) the occupier or resident at Barford Avenue, (b) any employee, contractor or agent to BHPA Ltd, (c) Ms Lee, any member of her family or visitors to 81 Barford Avenue. It included paragraph 2, which was about using violence or attempting to do so. I am going to pass over that, because that is not featured in today's case. Then paragraph 3,

"3. Intimidating or attempting intimidate

(a) any occupier or resident of Barford Avenue, Bedford, Bedfordshire,

(b) any employee, contractor or agent to BHPA Ltd,

(c) Ms Lee or any member of her family or visitors to 81 Barford Avenue, Bedford.

4. Causing or allowing damage to be caused to any part or property belonging to any occupier or resident at Barford Avenue, Bedford, Bedfordshire any employer belonging to any employee or belonging to Ms Lee."

- 4 This order had at the top of it a penal notice which said, "If you do not obey this order, you will be guilty of contempt of court and you may be sent to prison." Each of them got a separate injunction order, that is Mr Declan Molloy and Mrs Molloy, and it was to remain in force until further order.
- 5 There was then a return date, which was on 30 June, but for some reasons the defendants did not attend. There was some issue about the statements of service, and so it was adjourned until 11 August, when the defendants were in attendance and they indicated that they wished to defend the matter. Directions were given towards trial.
- 6 On 25 September, the committal application in these proceedings was made in relation to six allegations that ran from 12 July to 20 September. The committal application first came on in front of Deputy District Judge Perry on 19 October, with the defendants in attendance. At that hearing, there were directions for committal which was to be heard on 23 February, and there were also directions on the injunction application with a power of arrest being attached to some of the provisions, and an unless order that the defendants had to file evidence in relation to the injunction application.

7 There was then a hearing on 7 December, when the injunction was made final. At that hearing the defendants were not represented, but it was recorded as follows by District Judge Ayers of Bedford that

"Upon the defendants agreeing that the interim injunction order and power of arrest be made final,

And Upon the Defendants acknowledging in open court that they were aware of the terms of the injunction order and the power of arrest and acknowledging that although they will not take a copy of the orders away with them, they understand they will be in force until 6 December 2021."

8 It was also explained to them that they were subject to committal proceedings, and there was a trial of the committal on 23 February, which was to be a face-to-face hearing.

9 That came in front of me on 23 February. There was an email from Mr Molloy saying that there were difficulties because someone at his work was Covid positive. I adjourned it until today out of an abundance of caution, and also recognising there were attempts to contact the defendants remotely by phone and they were not answering. I am very glad I did, because in the interim the defendants, very sensibly, obtained legal representation and have been extremely well assisted by Mr McLeish and through solicitors as well. I am very grateful to the legal team for the Molloy's.

10 As far as the original application for the injunction is concerned, the claimant places reliance on the nature of the allegations that were being asserted, and which form the basis of the injunction that was made. This is now a final injunction as a result of the order that was agreed to by the Molloy's in December of last year, but initially made in June.

- 11 Pausing there, there is no issue about service. The order was served initially, I think on 23 June, and the application to commit it is accepted has been served on the defendants.
- 12 Ms Lee in her allegations, starting at paragraph 11, talks about having CCTV. This is going back to September 2019, so nearly a year before the committal application issues arose. They are talking about Mr Molloy coming back to the property, coming out of his vehicle and saying loudly and shouting in the street, "Hello, I'm back, fuck off". Saying things on the 2 October such as "Monkeys" and making monkey noises as Mr Molloy exits his car and monkey gestures with his arms as he walks back to the property. On another occasion saying, "Fucking wankers, fucking monkeys" as he is coming into the property. All of which was captured on CCTV. Shouting, "Bunch of bastards" as they were exiting their vehicle, there being an issue, Mr Molloy saying to Mrs Molloy first of all, "You're not parked too close to the fucking monkey's red car" and then shouting, "a bunch of bastards". There being an issue between the parties about parking.
- 13 I am not going to go through all of the allegations, but this carried on into January. On 11 January, the defendant walked through the communal gate saying, "Why? What's the matter? I can't walk in my own fucking gate" and then he is heard making loud monkey noises as he continues to walk into his property.
- 14 On 7 March, the allegation was that he walked to his property from his vehicle and appeared to say, "You can't park there, fucking Ms Piggy. Fucking park there, just a black pig" and so on.
- 15 The point being made by the claimant very forcefully, is that the defendants were very clearly aware of the nature of the allegations and that they would be caught on CCTV

footage coming in and out of the communal area, walking from their car towards their gate and saying abusive things. In the original statement Ms Lee said this,

"I feel very vulnerable, unsafe and I refrain from going on occasions as the defendant's (Mr Molloy) behaviour can be unpredictable and intimidating. I'm very paranoid living in my home as a result."

16 She also talks about the negative effect on her husband, Mr Paul Peters, although I think it is her partner, and also her daughter; her husband and her being sometimes scared to leave the property, because they fear being verbally and/or racially attacked.

17 That was in her original statement that formed the basis of the application for the injunction. As I say, it was not ultimately contested by the defendants. Whilst it is now said they did not have legal representation, it matters not in the sense that that injunction was made; final injunction was made in the terms I have already set out. Mr and Mrs Molloy were in court on more than one occasion, either physically or remotely and therefore, fully aware of the terms.

18 The application to commit was initially made I think, on 25 September. It was then amended on 26 October. The original judge who heard it possibly thought it should be amended, or the counsel thought it should be amended because of the changes in CPR 81 as a result of 1st October rule change. It does not matter; there is no point taken about that. The schedule consists of six allegations against the defendants, of which in effect now, only one really relates to Mrs Molloy, and I will come back to that in a moment.

19 In relation to five of them, I have seen CCTV footage, which is very helpful. I have also had the benefit of hearing evidence from Ms Lee, and Mr Palmer has adopted his witness

statements, although has not been cross-examined. Mr Molloy did file a witness statement, and as he is entitled to do, has exercised his right to silence and chose not to give evidence. Mrs Molloy has given evidence and therefore, I have all that in front of me today.

20 I bear in mind very clearly that I have to be satisfied to the criminal standard of proof, that is beyond reasonable doubt. I have to be satisfied so that I am sure that the incidents occurred and are breaches of the particular paragraph of the injunction that is asserted. What the claimant says is that I can be so satisfied, having heard the evidence of Ms Lee and having seen the footage.

21 The point that Ms Moate says on behalf of the claimant, is that one must look at the background to this case. It is not a case where the injunction was sought because of face-to-face aggression, it was sought because of the sort of incidents raised. What she says is the flashpoint, if I can call it that, is the corner of the communal gate area, and the pathway outside the two properties between the car and the gateway, coming into the communal gateway. The whole basis of this injunction was to stop the sort of actions by the defendants who were using the communal area to be abusive and intimidatory, making monkey noises, gestures and racial abuse.

22 The point which is made by Ms Moate is yes, it is not face to face, but it is on CCTV footage, which the family of the Lee's regularly and continually watch. Partly because they want to know what is happening, but they want to know whether it is safe to go out, says Ms Moate and Ms Lee. That they watch it to see what is happening and whether or not it is okay to leave the property. These incidents which she says have been proved, are a breach of either paragraph 1(a) or (c) or 3(a) and (c), and in relation to one allegation, paragraph 4 of the injunction.

23 Mr McLeish says I have to be extremely careful about how I approach this, because even if I find the incidents proved as pleaded, they are not a breach of the injunction. Because what is happening is that these are private conversations between Mr Molloy and his wife, or Mr Molloy muttering to himself. Unless I am satisfied that he is deliberately seeking to intimidate the Lee's or other occupiers or residents, he says whatever he is doing cannot be a racist, offensive or abusive language or gesture against an occupier, because at no point was there any face-to-face contact. The best that I could find was that there was intimidation on the basis that Mr Molloy was deliberately seeking to intimidate the family by saying things, in effect in the face of the camera, knowing that they would see it. I simply cannot be satisfied so that I am sure on that.

24 I bear both those factors in mind and I accept that it is not the usual sort of case where one has a very clear breach of injunction, where someone is shouting in someone's face. It is more nuanced, if I can put that way, in this case. What I intend to do is look at each individual allegation, satisfy myself as to whether on the evidence, the claimants have established that the allegation occurred and then analyse whether or not that is a breach of the injunction in each instance.

25 The first allegation that is made, and I just want to go back to the original, because I do not think the Scott Schedule is entirely word for word accurate. The notice to show cause as amended, I think is p 43 and the schedule of breaches is at p49 of the bundle. I am going to deal with the allegations against Mrs Molloy first, because as I said to Ms Moate and Mr McLeish, it is very important to separate out, these are two separate defendants with individual allegations against them. Although a number of the allegations in the Scott schedule is said to be against Mrs Molloy, for reasons I will come to, I am satisfied that there is only one which really relates to her, and that is the final one.

26 As far as the first allegation is concerned, it is quite clear that the allegation of shouting "cunt" was against Mr Molloy, not Mrs Molloy and therefore, the best that can be said about Mrs Molloy was she was present when her husband breached the order potentially. I do not think that is a breach by her, therefore, I do not accept that allegation one pertains to Mrs Molloy. Allegation two is not against Mrs Molloy, allegation three is not against Mrs Molloy.

27 Allegation four, there was an allegation that Mrs Molloy had said "shall I block it", which appeared to be relating back in time to the issues with the cars. I am quite satisfied, having looked at the footage, that this was an occasion where Ms Lee - and I have a lot of sympathy for Ms Lee, and I will come onto her evidence in a bit more detail - has wrongly heard "block it" against the history of her concerns about the behaviour of the defendants in the past. On this occasion, I am not satisfied so that I am sure that it is "block it" rather I heard "lock it". Looking at the footage, I consider that what Ms Molloy was saying was, "Shall I lock it or not". Therefore, I do not consider there was any breach by Mrs Molloy in that context. She does not say anything else that could be a breach in relation to allegation four.

28 As far as allegation five is concerned, it was accepted by Ms Moate, that the abuse or swearing that was heard all came from Mr Molloy and so again, that does not relate to Mrs Molloy. That leaves only allegation six, which is that she arrived at the property, aggressively opened the gate. Due to continually slamming the gate aggressively, it is damaging Mrs Lee's fence. Ms Lee's evidence about this was to the effect that there is a long history of this and that over time, it has led to it being worn out. She has had work done to it as a result.

29 I am not disputing that she may have had work done to her fence. Whether it is due to the gate being opened aggressively or not, I cannot say for sure, and I certainly have not seen

any evidence, as in there is no documentation. This is on 20 December 2020. I have not seen any evidence since 20 September that Ms Lee has had to mend her fence as a result of the actions which occurred on 20 September. What is said is that this is a breach of paragraph 4, because she caused or allowed damage to be caused to the property of Ms Lee.

30 What I saw and what I find is that the second defendant, Mrs Molloy, came home and pushed the gate open. It does bang against the fence. I cannot be satisfied, looking at it, that she has been aggressive. It was a pushing open of the gate. I am also not satisfied, so that I am sure, that as a result of that incident, she caused damage to the fence. It looks like a rather poor arrangement whereby if one does open or push the gate with a certain amount of force, it will slam against the fence.

31 As I have already indicated, it seems to me that is a matter for BHPA, assuming it is their communal gate, to try and resolve it so as to prevent that happening and stop there being damage. I do not find that that is proved either that she was being aggressive and/or that it caused damage on that occasion. It may be that repeatedly opening up the gate and it hitting the fence does cause damage, but I would need to find that on that at occasion it did so. Therefore, as far as Mrs Molloy is concerned, I do not find that she has breached the injunction, and therefore there will be no order against Mrs Molloy.

32 Turning now to Mr Molloy. Before I deal with Mr Molloy, I want to just address Ms Lee's evidence, because she is the only person who has giving live evidence before me today. Mr Molloy has chosen not to give evidence. That is his right, but of course it does mean that the only evidence before me is that of the claimant and their witness.

33 Mrs Lee came over as someone who was seeking to tell me the truth, and I have no doubt that what she told me is what she genuinely believes and has perceived. That, of course,

does not mean necessarily that it is accurate, because one has perceptions based on history. In this case, her history is of experiencing abuse and harassment from her neighbours and therefore, seeing things through that prism. I take the example of noise nuisance, where people become extremely sensitised to noise, and become more anxious about the noise that they hear.

34 That is not, in any way, to diminish the effects of having to experience racial abuse from a neighbour, which is always unacceptable, intolerable and disgraceful. It is not surprising, therefore, that when Ms Lee has put up CCTV, she and her family watch it anxiously to see whether they are safe to leave their home, whether the injunction is being observed. One cannot blame her for doing that. I did not find anything in her evidence to be lies, there was some exaggeration and I give the example where she heard, "block it", where I am quite satisfied it was "lock it". That is the example I would give. What she is seeing is within the context of her history and her belief that she has neighbours who do not like her, do not wish her well and will use every opportunity to undermine her position.

35 Having said that, I have to be satisfied on the criminal standard that there have been the breaches that are alleged. Fortunately, in all but one case in this instance, I have video footage to assist me, for which I am extremely grateful, because it is always difficult where it is one person's word against another. In this case, there is no other person, but that is actually why the video footage is so helpful. I have Ms Lee saying to me, being cross-examined and being totally genuine, in my view, in saying "he's clearly saying this to the camera or he's clearly pointing out our car". That is what her genuine belief is. It is for me to decide, of course, whether I am satisfied so I am sure that that is in fact the case, or whether it is just that she believes that to be the case in the history of this matter. I spell that out to put the background of this matter.

- 36 On 12 July, the allegation is that Mr Molloy came back to the property and as they got out and approached the front gate, he shouted "cunts" at Ms Lee's property at 81 Barford Avenue. Ms Lee does not have the footage for that. I have her witness statement, I think it is paragraph 6 of her witness statement where she says, "As they approached the gate of the property, he shouted 'cunts' in the direction of my property."
- 37 The point that is made by Mr McLeish is there is no counter evidence. Mrs Molloy, although in her statement had said one thing, in oral evidence she said she really could not remember what happened on that occasion. Therefore, I have really the uncontroverted evidence of Ms Lee that he said "cunt" in the direction of her property.
- 38 What Mr McLeish says is twofold. Firstly, that I have to look at that, in effect, in the context of the other video evidence where one can see that there are times when Mr McLeish says although Ms Lee is saying he is shouting at the property, first of all, he is not shouting he is speaking. One has to put the CCTV up very loudly in order to hear it. Ms Lee accepted that he is sometimes talking to himself rather than shouting. The court needs to be careful that it does not really start trespassing (my word) on people's private lives in a way that is intolerable by using surveillance techniques.
- 39 I am satisfied, having heard from Ms Lee that the defendant, Mr Molloy, as he came through the gate of the property may well have said "cunts". I have seen his language on camera on a number of occasions where he has used expletives. I have seen him say "fuck" or "fucking" on at least two or three occasions, I have seen him spit, he uses the word "bitch" and on one occasion one can hear him say "cunts". I therefore have no hesitation in saying that I can be satisfied that Ms Lee is right to say that as he came through the gate of the property he said the word "cunts". What I am less certain about is whether it was in the direction of the property.

- 40 I say that because there were other occasions, which we will come to, where Ms Lee was saying it was in the direction of the property. When I looked at the footage, it was not as clear to me as it was to her that it was directed at the property. That is not to say that it was not said as he was coming into the property.
- 41 The difficulty I have about the incident on 12 July, without the video evidence and about some more context, is I know it is both defendants coming in through the gate of the property. I am satisfied that Mr Molloy is saying the word "cunt". What I cannot be satisfied of, in my view and in my assessment on the evidence before me, is that he is deliberately saying it to Ms Lee, or that it is otherwise than in the course of the conversation with the claimant, with his wife without seeing footage or something else a little more.
- 42 I appreciate what Ms Moate says to me that it is in the general vicinity of where there are problems, but in the absence of more detail, in my view, where it is a criminal standard of proof, I am not so satisfied. I would have no hesitation if it was on a probability to having a different view. However, where I have to be satisfied so that I am sure, it is a big leap to say that this expletive was directed at Ms Lee and her family where I have a man walking out of a car with his partner and he uses an expletive, in the context of a man I have not heard from directly. Having seen the video footage, I am quite satisfied it is not someone who is a stranger to expletives. I have to attribute his use of the words on this occasions to a breach of this order, and I am not able to find that in relation to ground one.
- 43 It may be that having gone through these allegations, the injunction will need to be amended to reflect the concerns I have about the defendant's behaviour, but I will come onto that in due course. Therefore, I do not find that allegation proved.

44 Turning now to the next allegation, allegation number 2, which is 9 September. What is said is that the Molloy's were outside the property. They got out of their car and Mrs Molloy said, "Shall I block it", the first defendant said, "yes". The second defendant turned to walk back towards the car before he stopped her and the first defendant pointed at Mrs Lee's cars and shouted, "fucking monkeys."

45 As I have already said, I have seen the video footage and I have heard from Ms Lee on this matter. It is right to say as Ms Lee gave evidence, she said it was not that he was gesturing towards her car, but rather that he was looking and pointing at the camera. What I saw on the video was, as I have already said, the second defendant was saying, "shall I lock it" and Mr Molloy then said yes. Mrs Molloy then turns to walk back and walks back, and as they come in through the gate, Mr Molloy very clearly and pointedly says, "fucking monkeys". He uses his thumb to sort of point backwards over his shoulder.

46 There was no context to this at all, except that he is entering the communal gate in sight of the camera and making a racist expletive. I am quite satisfied he said it, I saw it on camera. The question is, what was his intention and was it a breach of the injunction.

47 In the context of this case and in the history of this case, and Mr Molloy not having given evidence himself, and having seen the history of Ms Lee's allegations and what Ms Lee has told me, I am quite satisfied that this was a racist expletive directed at this family, the Lees. There was no other reason to say it, there is no good reason for standing in a communal pathway of a property you share with a black neighbour and saying, "fucking monkeys". There is simply no good reason at all to say that, particularly when you know that there is a CCTV camera pointing directly at you, where you have already been found to be saying abusive things of this nature, and there is a history of it.

- 48 Does it fall within paragraph 1? Is it using racist, offensive or abusive language or gesture against an occupier or resident or against Ms Lee, a member of her family or visitors to 81 Barford Avenue?
- 49 I do not think it is a breach of paragraph 1, because I am with Mr McLeish in that the ordinary reading of paragraph 1 it is that anyone would see that as being directed, actually face-to-face, against someone. I understand what was intended and it may well be that we need to amend and alter paragraph 1. It is plainly not in paragraph 2.
- 50 Is it, however, in breach of paragraph 3(c) because Mr Molloy is also forbidden, whether by himself or other people, from intimidating or attempting to intimidate Ms Lee, any member of her family or visitors to 81 Barford Avenue, Bedford, Bedfordshire. In my view, it is a breach of paragraph 3(c). I am quite satisfied that by entering his property, he may have been speaking to his wife, but he was speaking loudly and clearly in the vicinity of the common areas directly in front of a camera, in a point where he knew full well he was in CCTV view and for no reason at all, he says "fucking monkeys".
- 51 In my view, there is only one reason to do that, and he knew perfectly well that in doing it, he was seeking to intimidate Ms Lee and her family, who he knew watched the CCTV. I am quite satisfied that is a breach of paragraph 3(c). He was either intimidating or attempting to intimidate. Perhaps attempting is a better way of looking at it, but he was attempting to intimidate them by saying these words which they would see on CCTV.
- 52 Of course, I heard from Ms Lee, that that is the effect this action has and therefore, I am satisfied so that I am sure that in relation to paragraph 2, Mr Molloy did breach paragraph 3(c) of the injunction and I find allegation 4 established, which is the 9 September allegation.

53 As far as paragraph 2 is concerned, which is 25 July, this is the allegation that he went to his car outside the property because the car alarm had gone off, and while he was standing by his car, he pointed at Ms Lee's daughter's car and shouted, "fuck off" and (one cannot hear it) "bitch".

54 I have seen video footage of that incident and I have also heard from Ms Lee about that incident. One can quite clearly see that Mr Molloy goes outside, the alarm is going off and he does point, and he does say something along the lines of "fuck off (something) bitch", that much one can hear. What I cannot see is that he is actually pointing at Ms Lee's daughter's car. What Ms Lee said to me was that she knows he would have been pointing at her car, because it is against the background of this case.

55 You cannot see it on the video but everyone has told me, and Mrs Molloy agrees, that Ms Lee's daughter does park her car in the driveway of the house next to Mr and Mrs Molloy. It is therefore certainly possible that he was pointing out the daughter's car. He was about eight metres from the property at this time, and Ms Lee accepts herself that he was muttering or talking to himself, although he was speaking pretty loudly, and he was obviously annoyed.

56 There is no doubt that Mr Molloy did go to his car, he did point, and he did shout "fuck of (somebody)". I am quite sure that Ms Lee is convinced and confident that he was pointing at her car and saying it to her daughter's car. For the purpose of a breach and a committal, where I am talking about sending someone to prison, where I have to be satisfied to a criminal standard of proof, I am not satisfied that it is proved that he was pointing at a car. Further I am not satisfied that it was a breach of the injunction in that what he was seeking

to do was to intimidate or attempt to intimidate anybody. At best, he had lost his temper about something and in his car or around his car he was being abusive.

57 Again, whether that needs to be tidied up in the injunction is another matter, but one does have to be careful about straying outside too far; people have to have some ability to behave badly if they want to, without it necessarily being a breach of the injunction. In this case, as I say, obviously if Ms Lee's daughter had been in her car, that would be entirely different, but I cannot even see the car. Ms Lee, although she gave evidence, say that is where her daughter's car would have been, and she was certain that is what it would have been about.

58 Her conviction about something is not the same as this court being satisfied beyond reasonable doubt. Therefore, although I find that the first defendant was angry and abusive and shouting unpleasantly, I cannot be satisfied that it was directed at this family or that he was intending to deliberately breach the injunction in some way by his actions on that case on that occasion.

59 As far as 19 August is concerned, the allegation is that he got out of his car and he approached the garden gate. He spat and then stared directly at Ms Lee's CCTV camera as he walked through the gate.

60 Again, I have heard from Ms Lee and again, I have seen the CCTV footage. Ms Lee told me that it is not the first time he has spat outside the communal gate, that it happened a couple of years ago. She said it is the sort of thing he does, and she was quite sure it was intended to breach the order.

61 I have seen the footage and I can see the defendant. He does get out and he spits right in front of the gate. I did not see him stare directly at the camera in the way that is said. He is

looking around and he certainly does spit as he approaches the gate and therefore, I am satisfied he did do that. Am I satisfied that in doing so, it was a breach of the injunction? Is that using racist, offensive or abusive language or gesture against an occupier or Ms Lee? I am not satisfied of that. As I say, again, it is not directed at an individual.

62 Was it an attempt to intimidate? It is certainly possible that that is the case, but it is a one-off, not something that had been raised in the previous statements as a continual matter that Ms Lee was complaining of namely that there had been spitting. It is obvious that could amount to harassment or intimidation of an individual that you spit in their general direction. It is a deeply unpleasant action to be spitting outside on the street, and not something to be condoned, but I cannot be satisfied to the criminal standard that a one-off action of spitting outside the gate is a breach of this injunction. It could just be extremely poor personal habits and as I have said those do not amount to a breach of the injunction.

63 I have dealt with item four out of sync, and I apologise for that. Item five is an allegation that the Molloy's were outside the property on 19 September, and they can be heard saying "fucking cunts" as they walk through the gate of the property and then they were heard swearing as they approached the property.

64 It has now been accepted, this allegation is only against Mr Molloy. Again, we have Ms Lee's evidence. There is a history of this happening as they come in through the property, at the gate, it is at that point that Ms Moate says is the flashpoint where they are deliberately saying things which are offensive, and are directed towards Ms Lee as they come in through the gate of the property.

65 There is no question, and I am quite satisfied, that Mr and Mrs Molloy are coming through the gates. One can hear Mr Molloy saying, "Fucking cunts" and then as he walks across out

of sight I hear him saying "fucking" and "fucking" again. I am therefore completely satisfied he said those things. What I am not able to be satisfied of, so that I am sure, is that they were directed at Ms Lee. What I saw were two people having a conversation. There is no question that Mr Molloy is angry, and he is swearing his head off. What I am not able to be satisfied of to the criminal standard of proof is that this abuse is directed at Ms Lee, even in the context of the history of this case, where I am very conscious of this area being the flashpoint. I am simply not satisfied on the criminal standard of proof of the incident, when I have looked at the video footage where there does seem there is some sort of conversation. There were two people there. I did not see him looking at the property or acting in a way that I could be confident that this was a deliberate act directed to Ms Lee. It is a communal path. Ms Moate may be right, and it may be deliberate, but I have to be satisfied on the criminal standard in order to be able to say that there has been a breach of the injunction. Therefore, I do not find this allegation proved.

66 As I say, I do find allegation four proved, that the first defendant did breach paragraph 3(c) when he gesticulated over his shoulder with his thumb and said, as he entered the communal area outside the two properties, "fucking monkeys".

67 I will need to hear the parties on sentence in relation to that matter and as I will also need to hear the parties in terms of the injunction which I wish to amend, to take account of the concerns I have about the way it is drafted. To ensure that in the future, these flash points can be avoided.

CERTIFICATE

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