

IN THE COUNTY COURT AT CLERKENWELL AND SHOREDITCH

Case No: H01EC842

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

Wednesday, 16th February 2022

Before:
DISTRICT JUDGE HAYES

B E T W E E N:

LONDON BOROUGH OF TOWER HAMLETS

and

MR ROBERT MORRISON AND MISS KARMEN STEVENS

Mr Anderson, Counsel, appeared on behalf of the Claimant
NO APPEARANCE by or on behalf of the First Defendant
NO APPEARANCE by or on behalf of the Second Defendant

JUDGMENT
(Approved)

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

DJ HAYES:

1. This is an application by the London Borough of Tower Hamlets to commit Mr Robert Morrison and Ms Karmen Stevens in relation to alleged breaches of an anti-social behaviour injunction made by District Judge Naidoo on 4 August 2021. Neither of the Defendants have attended, but I am satisfied, to the criminal standard, that they are aware of today's hearing, and that they have been served with the materials that I am going to rely upon in making my decision today.
2. Mr Morrison is the Local Authority's tenant of 46 Merceron House, Globe Road, London, EC 0PA. It would appear that his girlfriend is Ms Karmen Stevens and that the reason for the injunction being obtained was anti-social behaviour caused between the two at or in a vicinity of those premises.
3. The injunction at paragraph one ordered that:

“The First Defendant is forbidden (whether by himself and/or instructing and/or encouraging any other person) to engage in conduct capable of causing a nuisance, annoyance or disturbance to any person living in or visiting or engaged in law activity [but that must mean, on any sensible meaning, “lawful” activity] in the residential building block known as Merceron House, Globe Road, London, E2 0PA in breach of rules 10 and 11 of his tenancy agreement with the claimant, a copy of the said rules 10 and 11 is attached is attached to this order”.
4. Paragraph two ordered that :

“The First Defendant is forbidden (whether by himself and/or instructing and/or encouraging any other person) to allow or permit the Second Defendant access to his residential council accommodation known as Flat 56, Merceron House, Globe Road, London, E2 0PA”.
5. The third provision was against the Second Defendant alone. It was that:

“The Second Defendant is forbidden to enter or attempt to enter ‘the Exclusion Zone’. The Exclusion Zone is defined for the purpose of this Order as the part of the Claimant’s housing estate enclosed within the following named roads: Globe Road, Old Ford Road, Sugar Loaf Walk and Victoria Park Square, within which Merceron House, Globe Road, London, E2 0PA is also located. A copy of the map of the Exclusion Zone shaded in red is attached to this order”.
6. That map is very poor in the documents that I have, but at the bottom of it, it does have this on it: “excluded from area highlighted in red which includes; Evesham House, Gretton House, Merceron House, Montfort House, Mulberry House, Westbrook House,”. I am satisfied, against the criminal standard, that the plan must have been such as to specifically designate that those premises were within the Exclusion Zone.
7. I am satisfied, having seen certificates of service to this effect, that each of the Defendants was served with that injunction order on the 16th August 2021, personally. I have certificates of service from Nigel Hyde, a patrol officer, to that effect, in fact dated the 15th August. The reason he has put the date of service as 16th August is because personal service was at 19.13 on the evening of the 15th. All of the allegations that I deal with in this judgment post-date 16 August 2021.
8. This case has been before the Court, in terms of this application, on a number of occasions. The application to commit has been amended. There is some subsequent evidence that has been obtained that has been served, certainly, on the First Defendant. I err on the side of

- caution, however, in relation to the service of that subsequent evidence, that is to say the second affidavit of Mr Patel, as regards to the Second Defendant.
9. Dealing with service, the case came first before District Judge Swan on 23 November 2021, and he made an order for permission to serve Mr Morrison by alternative means. It then came before District Judge Bell, who made an order for permission for alternative service, also, as regards Miss Stevens and granted permission for the claimant to amend its application.
 10. The case then came before me on 7 January 2022. There had not been appropriate service at that point, and I adjourned the matter. It was made clear on the face of that order, as on the other two preceding orders, that a committal could take place, including any sentencing and imposition of penalty if the allegations were provided in the absence of the Defendants if they did not attend. There was a clear warning to that effect.
 11. I should say, also, that ahead of that hearing, there had been contact with the Court, I believe by the Second Defendant on behalf of the First, to say that he was in hospital and unable to attend. There had been some contact made, I think, before the hearing in front of DJ Swan to the effect that one or other of the Defendants could not attend. I am satisfied that both know of the proceedings.
 12. I have two witness statements from Nigel Hyde in relation to service of the amended N600, schedule of breaches and my order which included the date and time of today's hearing. That shows, as regards Mr Morrison, attempts at personal service and then on 21 January the posting of those documents through his letterbox.
 13. That is, I think, a day late as regards service. It may, in fact, be three days late because of the operation of DJ Swan's order was that there would be deemed service 48 hours post-insertion. However, I do not consider there to have been any prejudice attendant to that, and I will extend¹ time in relation to service. I am satisfied that he, therefore, has been appropriately served.
 14. There is also a witness statement from Mr Hyde in relation to service on Ms Stevens.² That shows two attempts to personally serve her. That being ineffective, he delivered the documents to her at 46 Mercer on 21 January 2022.
 15. Again, that may well be a day late, but again, I will extend time³ for service in relation to that. In addition, it was a requirement that Ms Stevens, for the alternative method, be served by way of email, this pursuant to DJ Bell's order. I have a certificate of service in relation to that together with a copy of the email. That is on 21 January 2022. In addition, also, I have certificates of service in relation to the original committal applications. As regards Mr Morrison, service was by it being handed to him personally. I take that to include Mr Patel's evidence (i.e. his first affidavit), Mr Jackson's evidence and Mrs Clarke's evidence. I have a certificate of service to that effect and also, the posting of it through his letterbox as regards to the second affidavit of Mr Patel.
 16. As regards Ms Stevens, she was personally served with the first original form of the application and I take that on its face to include the original evidence, but she has not been served with Mr Patel's second affidavit.
 17. I heard evidence from Mr Patel. He lives at 37 Mercer House on the ground floor. Mr Morrison's flat is on the third floor.

¹ The words "abridge time" were used in court; in approving this transcript that has been corrected to what was intended, namely extension of time for the service required by paragraph 1 of the order of District Judge Hayes of 7.1.22

² See also "Addendum regarding service"

³ The words "abridge time" were used in court; in approving this transcript that has been corrected to what was intended, namely extension of time for the service required by paragraph 1 of the order of District Judge Hayes of 7.1.22

18. I heard evidence from Mrs Clarke. She lives at 41 Merceron House.
19. Mr Jackson, who lives at 49 Merceron House, did not attend. Therefore, any allegations that rest on Mr Jackson's evidence, I find not to be proved.
20. As regards any allegations that rest on Mr Patel's second affidavit, as regards the Second Defendant, I find those also not proved given the fact that she has not been served with that affidavit. I should say, as regards Mr Patel's second affidavit, that appears to have been delivered to the premises. It is not entirely clear to me whether or not there had been two attempts at personal service the First Defendant at that point, but it is clear, in fact, from DJ Swan's order that that was not necessary as regards the First Defendant.
21. In addition, I had a helpful schedule of allegations in relation to each of the Defendants. I shall take them in turn. The numbers that I will use are the numbers that appear on the schedule.
22. Allegation one, as regards Mr Morrison, reminding myself in relation to all of these allegations that they need to be proved against the criminal standard, that is to say beyond reasonable doubt so that I am sure, is that on 30 August 2021, Ms Stevens was on a bench with Mr Morrison; that Mr Morrison was found inside the Exclusion Zone with Ms Stevens and that this is a breach of paragraph one of the injunction.
23. The injunction, as regards paragraph one, prevents Mr Morrison from engaging in conduct capable of causing nuisance, annoyance, or disturbance to certain classes of people. Those classes of people include, clearly, Mr Patel, for Mr Patel is a resident of the block. Paragraph one is constrained, in terms of what it polices, to conduct that would be a breach of rules 10 or 11 of the tenancy agreement, but that seems broad enough to me to encapsulate unpleasant behaviour and abusive behaviour within the locality of the premises.
24. Unfortunately, I do not have sufficient evidence to identify where Museum Gardens, which is where this is said to have taken place, is in terms of how proximate it is or is not to Merceron House. For that reason, I find allegation one not proved.
25. Allegation three is that on 18 September 2021, Robert Morrison seen with Karen Stevens in the bin area of Merceron House arguing. That is dealt with by Mr Patel in his evidence at paragraph 12.5.
26. Mr Patel says that at 23.15, he had just got home from visiting his brother. He was getting ready to go to sleep. He heard very loud sounds of two people arguing by the bin area, looked out of his window, and saw the First and the Second defendant screaming and swearing at each other. He called or was set to call the police.
27. I have no doubt that that falls squarely within paragraph one of the injunction in terms of the type of behaviour that one is dealing with. It does not fall within paragraph two, but it is not alleged to, because it is not within the flat itself. However, I do find that to be proved against the criminal standard as regards paragraph one.
28. Next is 24 September 2021. Mr Patel, in his first affidavit, says that at 7.31 he "heard someone enter our building. When I looked through the 'spyhole' in my front door, I saw the Second Defendant and a known drug dealer...". I pause there to say, and correct myself, that that section I have just read is, rather, an allegation against the Second Defendant, not the First Defendant, and relates to the 30th August, not the 24th September. The matter, in fact, relied on against the First Defendant, on the 24th September 2021, namely allegation 4 on the schedule, is dealt with at paragraph 12.6 of Mr Patel's affidavit. The allegation is that Mr Morrison was in his own flat, that is 46, standing on his balcony and that Ms Stevens was yelling at him from the window of a flat in Montford House.
29. The light and the shade of that is that given by Mr Patel at paragraph 12.6 onwards of his first affidavit. He says that he was asleep, and he was woken by sounds of screaming and shouting; the Second Defendant was yelling at the first and he heard the First Defendant's door slam

- shut.
30. It seems to me that that clearly was an argument between the two in the early hours of the morning. I accept that the slamming of the door is certainly to be that of the First Defendant. I find that also clearly within paragraph one and to be proved as a breach.
 31. As regards allegation number five, this is dealt with by Mr Patel's second affidavit. The allegation is that Mr Morrison and Miss Stevens were inside Mr Morrison's flat and that they were arguing. Again, this is the early hours of the morning, 3.13.
 32. Mr Patel says he was awakened by very loud sounds of screaming, shouting and doors being slammed, walked out of his flat at the stairs to the third floor, could clearly hear the aforementioned noise emanating from inside Flat 46. And then he says: "...I clearly heard Karmen Stevens screamingand Mr Robinson yelling in response....". Then he describes further noises. In addition, he says that at 4.58, he looked through the spyhole and saw Karmen Stevens walking down the stairs.
 33. I am satisfied, against the criminal standard, that that is behaviour within paragraph one and also paragraph two, being satisfied that the First Defendant must effectively have allowed the Second Defendant into the premises, namely his flat.
 34. The same affidavit, at paragraphs seven and eight, deals with the sixth allegation; that is say, that Mr Morrison and Miss Stevens were yelling at each other inside his flat on the 15th November 2021.
 35. Having read those paragraphs, again this matter is relatively late at night, 22.42, and Mr Patel says that he heard shouts and screams in the communal area and the bins; he saw Miss Stevens with another male, who he says is a drug dealer and that Ms Stevens was yelling up to Mr Morrison.
 36. In fact, the part of Mr Patel's second affidavit that deals with seeing Ms Stevens at the premises is paragraph seven rather than paragraph eight of his affidavit. It is at 18.54 and Mr Patel says that his neighbour, Mrs Clarke, informed him that Ms Stevens had entered the building. That, therefore, is hearsay evidence, but he says then, directly, that a few minutes later he could hear clearly Ms Stevens and Mr Morrison yelling incoherently at each other. He says that went on until 19.29; he says that he opened his door and heard the front door of Flat 46 slam shut, and then Ms Stevens walked down the stairs right past him.
 37. I am satisfied that specific allegation, which is at 18.54 to 19.29, is proved. That is to say, that there was arguing between the two at a volume that everybody could hear, that is a breach of paragraph one of the order, and also allowing her into the flat; I find that proved also.
 38. Allegation seven is at 1.52 in the morning on 18.11.21. Mr Patel, and this is from his second affidavit, says that he heard the sound of the door being repeatedly slammed. He says that that clearly came from upstairs in the building.
 39. He says he heard two loud voices yelling; he looked through the spyhole, saw Mr Morrison and Miss Stevens walking down the building and that they were shouting at each other. That, I am satisfied, also again is a breach of paragraph one of the injunction. There is no sufficient evidence as to him having her in the flat on that occasion, so that is a breach of one alone.
 40. Last, number eight, which is 27 November, again, this dealt with in Mr Patel's second affidavit. He says that Mr Morrison and Ms Stevens were yelling at each other and shouting at each other inside number 46. His affidavit says:

"I was sat quietly in my flat doing some work heard loud noises ...emanating from somewhere upstairs in the building... opened my front door ...could clearly hear a female voice screaming and yelling. At12.59, I clearly heard two voices- one male, one female screaming and shouting at each other... opened my front door once again and I saw Karmen Stevens walking down the stairs, right past my

own flat on the ground floor. She looked right at me. Robert Morrison was right behind her....” [and there was some foul language passing between the two]”.

41. I am satisfied that that occurred. I find to the criminal standard that that did occur. That is a breach of paragraph one, in terms of the unpleasantness and the volume of the behaviour from the First Defendant. Given the length of time that was going on and the slamming of the doors I am satisfied beyond reasonable doubt they had originally started within Mr Morrison’s flat. Therefore, that is a breach of paragraphs one and two proved. That is a regards Mr Morrison.
42. As regards Ms Stevens, allegation five has been abandoned in circumstances where Mr Jackson is not here to prove it. Allegations eight through to 11, I find not proved in circumstances where Mr Patel’s second affidavit cannot be proved to have been served upon her.
43. I remind myself all of these allegations, as regards Ms Stevens, are allegations that she is in breach by being within the Exclusion Zone, and the Claimant needs to prove the extent of the zone and that she was there on the relevant days. The first allegation is: 21 August 2021, found in the Exclusion Zone, loitering/ hanging around outside the door entry of Montford House.
44. Mr Patel, at paragraph 12.1 of his first affidavit, deals with that, and I find that proved. Mr Patel is clear about what he saw, and that is dealt with, as I say, in his affidavit. Montford House is clearly defined as being part of the exclusion zone on the plan by way of the words at the bottom of it.
45. Next, allegation 2 is on the 23rd August being in Montford House, again. This allegation is put forward on the basis of Mrs Clarke’s affidavit evidence, which is at 197 of the bundle. At paragraph 9.1 she deals with the matter. It is right to record there that Mrs Clarke gives evidence that when she raised the matter with the Second Defendant, her response was that “I haven’t got a copy of the injunction”.
46. I am satisfied, however, against the criminal standard, having seen the certificate of service, that the Second Defendant had been served with it. That reference by the Second Defendant to her not having a copy of it maybe to not having a copy of it on her or it may simply be her trying to exculpate herself and explain why she was there.
47. However, I am satisfied, as I say, that she had received the injunction and I am satisfied as to that to the appropriate standard. I am satisfied that the Second Defendant was at Montford House on 23 August 2021, and that is a breach.
48. Next, again dealt with by Mrs Clarke evidence, is that on the 27 August Ms Stevens was talking on the balcony of Flat 46. I am satisfied that that was the case. Mrs Clarke gives clear evidence that that is what she saw.
49. Allegation four on the schedule is, in fact, two allegations on the 30th August 2021. First that the Second Defendant was found in Museum Gardens. For the reasons I gave earlier, I am not satisfied it can be proved that that is within the Exclusion Zone.
50. Secondly, that the Second Defendant was found entering Merceron House, the evidence being this was at 7.31am. Mr Patel in his first affidavit deals with that matter: “...I saw the Second Defendant and a known drug dealer, who lives in Montford House... enter our building”. Therefore, I am satisfied that that is proved.
51. Next, 18 September, Mr Patel, as I say, says that he got home having been to visit his brother and saw the two, that is to say both Defendants, arguing in the bin area. I am satisfied that is within the Exclusion Zone and happened and that is a breach.
52. Likewise, that on 24 September, there was the yelling from Ms Stevens to Mr Morrison. This

is followed by the slamming of the door, I think, by him, and that she was at that point in Montford House, which I am satisfied is in the Exclusion Zone. That is the last allegation against her. I find each of those proved.

53. There is no reason to suggest that either of the defendants do not know or understand the terms of the order. They clearly have taken some part in terms of communicating with the Court in relation to potential adjournments of the proceedings.
54. I did raise briefly the fact that at page 122 in the bundle, I think on 17th February 2021, there is a reference to a female related to this 46 Merceron Road address, being sectioned under section 136 of the Mental Health Act. That is quite some time back. It certainly pre-dates the injunction and service of it, and it significantly pre-dates all of these matters that I have dealt with.
55. I am satisfied the injunction is sufficiently clear and would be sufficiently well understood. I assume, unless the contrary is proved, or there are reasons to doubt it, that there is capacity on the part of the Defendants. Therefore, for all of those reasons, I am satisfied that there have been breaches as I have outlined.

End of Judgment in relation to breach

Sentence

56 There are a large number of breaches in relation to each of the Defendants. It does not seem to me in terms of sentence that there is a great deal of distinction between the behaviour of one and the behaviour of the other. Nor, the fact that there may be a greater number of breaches for the one than the other, makes a great deal of difference in relation to the matter. It is all clearly part and parcel of the same course of behaviour.

57 Culpability: I take the view, albeit that one is dealing with a large number of incidents, between August and November, that it would be wrong to designate this as “culpability A” by reference simply to the number of the breaches, it is more “B” that is to say ‘deliberate breach falling between A and C’. It certainly is not minor breach or breach just short of reasonable excuse.

58 As regards the effect, or categorisation, it is clearly not “3”, which is little harm or distress and I don’t take the view that it gets to category 1, that is to say serious harm or distress or continuing risk of serious criminal and/or anti-social behaviour. I put it at category “2”.

59. So, it is “B”, “2”, starting point is twelve weeks custody. It does not seem to me that there is anything significantly here to weigh the balance either way away from that period and so 12 weeks custody is what I sentence each of the Defendants to in relation to each of these breaches all to run concurrently.

ADDENDUM REGARDING SERVICE

[Prior to hearing the evidence and substantive submissions District Judge Hayes had pointed out that service appeared late under his order of the 7.1.22 and there appeared no proof that the documents left for the Second Defendant had been marked “important court papers”. Following exchanges between the District Judge and counsel, the District Judge gave the following short judgment (in the context of having asked whether counsel sought these matters to be waived and an extension of time and for retrospective service as regards Ms Stevens, notwithstanding any possible breach of District Judge Bell’s order):

I am satisfied these [i.e. the lateness of service and any failure to mark the envelope “important court papers”] are relatively minor matters. It is a matter of minutes in terms of lateness and it is a matter of certain words regarding importance of court documents not being there. Clearly, this is a very serious ongoing matter where I am satisfied the documents have been left for her with her name on it and the email has gone through as well. So, I will order to that effect.

[In drawing the order on determination of proceedings for contempt of court, as identified in the recital to that order, the District Judge provided for and ordered that time for service should be extended to 24.1.22, rather than 1 day, for the reasons given in that recital regarding the 22nd and 23rd January being weekend days]

DISTRICT JUDGE RICHARD HAYES
TRANSCRIPT APPROVED ON 3.3.2022

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Ubiquis hereby certify that the above is an accurate and complete record of the proceedings
or part thereof

This transcript has been approved by the judge.