

TRANSCRIPT OF PROCEEDINGS

Ref. G01EC872

IN THE COUNTY COURT AT CLERKENWELL AND SHOREDITCH

29-41 Gee Street
London

Before DISTRICT JUDGE HAYES

IN THE MATTER OF

POPLAR HOUSING (Applicant)

-v-

MR TACK (Defendant)

MR SALTER appeared on behalf of the Applicant
THE DEFENDANT did not attend and was not represented

PROCEEDINGS
29th JANUARY 2021
(AS APPROVED)

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Judgment on sentence

JUDGE HAYES: In terms of sentence it seems to me that the right approach is to look at these matters compositely in terms of any sentence being concurrent if the custody threshold is crossed. There are seven allegations that have been made out but if we take the allegation 3 and allegation 6, although they're sperate allegations, they're on the same day and could to an extent be looked at as the same event. That's one event. There are then two allegations on the 10th of November, and allegations on the 22nd and the 23rd. They're essentially three events. Is that sufficient to be able to designate this behaviour as being a very serious or persistent breach? It doesn't seem to me that it gets within that designation, certainly not at present.

It is the first time that this matter has come before the court in terms of allegations of contempt and breach of the order. It seems to me that it's culpability level B, that is to say deliberate breach falling somewhere between A and C. One can't describe it as minor or a breach just short of reasonable excuse, so it's culpability level B in my judgment, and it's category 2 in terms of the harm. I do accept that noise nuisance, particularly in the early hours of the morning and late at night, can cause considerable distress and harm, and that's attested to, certainly by Ms Murphy in her affidavit. I accept that so it's B2 in terms of starting point which would be 12 weeks custody.

Aggravating factors would be, and it is said, the rapidity within which Mr Tack has found himself in breach, the first event of breach being approximately two months post the order and that although he's not intentionally targeting, so far as one can see, any specific residents the order was made with a specific purpose to provide specific protection. Those are said to be aggravating factors. There's no specific mitigation put forward by Mr Tack who isn't here.

Now, these are simply starting points and ranges. One has to look at the totality of the case and, as I say, one is effectively looking at a relatively short period of time of breaches on, effectively, three occasions, albeit extended in terms of there being seven findings, and with it being noise nuisance complained of. It seems to me that the correct course, with this being the first time the matter is before the court, would be a sentence of six weeks custody. I am satisfied that the threshold is crossed. I am satisfied that there should be a custodial sentence. I can see no good reason for that to be suspended, so it will be six weeks custody.

Now, just help me with this, Mr Salter. I don't understand that one gives credit for the day that he may have been in custody as a result of the arrest, because this proceeding pursuant to the application, specifically.

MR SALTER: Yes, sir, no, I've not seen that (inaudible). I don't think we have to deal with that in any event.

JUDGE HAYES: No.

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

Approved: District Judge Richard Hayes 11.2.2020