Neutral Citation Number: [2022] EWHC 2601 (KB)

Case No: QB-2022-002577

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London
WC2A 2LL
Date: Tuesday, 6th September 2022

Before:
MR JUSTICE RITCHIE

- -

Between:

ESSO PETROLEUM COMPANY LIMITED

Claimant

-and-

(1) SCOTT BREEN
(2) THE PERSONS UNKNOWN WHO ARE DESCRIBED IN ANNEX 1 TO THE CLAIM FORM DATED 10 AUGUST 2022

Defendants

- -

Timothy Morshead QC instructed by Eversheds Solicitors for the **Claimant**.
Annabel Timan instructed by ITN Solicitors for the **Defendant.**

Hearing date: 6 September 2022

- -

APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR JUSTICE RITCHIE:

The parties

1. The parties are Esso Petroleum Company Limited ("the Claimant"), which is a private company involved in the business of production of fuels and Scott Breen, a private individual.

Hearing

2. The hearing, which took place today, concerned alleged breaches of a Court order by the Defendant and the Claimant's application to commit the Defendant to prison for contempt of Court.

Issues

3. By the time of the start of the hearing at 10.30 a.m. this morning the Defendant had admitted the asserted breaches of the relevant Court order and stated in open Court that he did not challenge any of the Claimant's served evidence.

Evidence

4. The folder for the hearing which I was provided with was a bundle of documents 497 pages long together with a bundle of authorities from the Claimant 218 pages long containing 14 authorities, one of which was a copy of the Civil Procedure Rules Part 81. I was also provided with a witness statement from the Defendant dated 6th September.

Chronology and findings of fact.

5. Set out below are my findings of fact on the evidence before me and on the admissions. They are made on the basis that I am sure beyond reasonable doubt about them. I interleaf them with the chronology relating to the action brought by the Claimant.

6. The relevant land to which this claim relates is east of Pannells Farm, Hanworth Lane, Chertsey in Surrey (the Land). It is owned by third parties. However, there is currently a section approximately 90 kilometres long in which the Claimant is replacing a fuel pipeline from Southampton to London to carry aviation fuel to Heathrow. This is a strategic construction of national importance for business, for members of the public, and for the gross domestic product of the United Kingdom.

7. Protesters seek to disrupt the laying of the renewed pipeline. Of course, there is nothing wrong with protesting and it is the right of citizens of England and Wales to do so, but they must do so within the law.

8. On 31st July 2022 the Defendant dug a pit on the relevant land, refused to leave it and lived in it.

9. On 10th August 2022 the Claimant issued proceedings against the Defendant seeking an injunction which was to be partly mandatory and partly prohibitory. The particulars of claim are in the bundle at pages 8 to 11. I will not repeat them here. Evidence was provided by the Claimant in a witness statement from Mr Anstee de Mas dated 8th August 2022.

10. The Claimant applied for an *ex parte* injunction and Mr. Justice Eyre granted that on 15th August 2022 against this Defendant and persons unknown. The order covered the land the subject of the Southampton to London pipeline construction project.

11. Under the injunction the Defendant was ordered to remove himself and his possessions from the relevant land within 72 hours (three days) of being served with the order. In addition, in summary, the Defendant was prohibited from damaging anything used in the pipeline construction project on the land, traversing any fence around the land, digging on the land, or locking on, putting anything onto the land, obstructing the Southampton to London pipeline project on the relevant land, blocking or impeding the project on the relevant land, or assisting others to do any of the above. There was a typing error in the order at paragraph 4(8) which I corrected in an order made yesterday.

12. The order could be varied on 24 hours' notice so long as the Defendant applied at the same time as giving his full name and address for service beforehand. A return date for the injunction was provided for 7th September 2022, and alternative service was provided for alongside personal service. Personal service was required for this Defendant because he was on the relevant land.

13. Service of the injunction order was effected at 11.20 hours on 16th August 2022 and the evidence from Mr Anstee de Mas dated 25th August 2022 satisfies me that personal service did take place at that time on that date at the pit which had been constructed by the Defendant on the Land.

14. On the Defendant's behalf an unattractive technical point was taken that service was deemed to have taken place the next morning, because CPR Part 6 and the deeming provisions therein say so. I do not need to decide that in these proceedings because the Defendant admits he was served with the papers and told generally the contents of them, namely that there was an injunction requiring him to leave the land and prohibit him from returning. The Defendant did seek to pick holes in the precise words that the service agents had used when verbally warning him of the contents of certain documents which they had

handed to him, but during the hearing the Defendant conceded that point and, if he had not, I would have found against him on the facts in any event.

15. On 26th August 2022 the Claimant applied to commit the Defendant to prison for contempt, because he had failed to leave the Land within the 72 hours of service allowed, and because he had constructed a wooden shelter over the pit, and because he was continuing to interfere with the construction operations on the Land.

16. I have carefully looked at the witness statements and affirmations from Mr Anstee de Mas, Stewart Watley and Mr Nawaaz Allybocus. Counsel informed me that the contents of these witness statements and affirmations or affidavits are not disputed.

17. What took place after the Claimant served the injunction was as follows.

18. Instead of leaving the Land, the Defendant started constructing a rickety wooden shed, which was like a building and which was at least 8 feet high and which was over the pit which he had dug directly into the ground. The pit had been dug between 6 and 8 feet underground. The pit was a downward shaft with no substantial horizontal element to it. The pit was not a tunnel. However, the rickety wooden structure built on top with wooden pallets and blue plastic was jerry-built and dangerous, in the sense that it would not take the weight safely of police officers together with the Claimant.

19. So in the knowledge of the injunction the Claimant intentionally stayed on site and built a structure covering it with slogans.

20. The day after the service of the Court injunction the Defendant published on various social media outlets the front page of the injunction. He did this at the same time as he failed to comply with the terms of the injunction, thereby in effect showing the world that he was refusing to comply with the Court order.

21. On 18th August 2022 the Claimant put up various warning notices at the site. Between 16th August and 2nd September 2022 the Claimant gave many verbal warnings to the Defendant about the terms of the injunction and the effects of failing to comply with it. Each time they did so, the Defendant played loud music through a megaphone, thereby blocking out the warnings he was receiving from the Claimant for his own benefit.

22. On Friday 26th August 2022 a service agent, Mr K Harrison, personally served the application to commit the Defendant to prison on the Defendant and read a summary of it to him.

23. On 2nd September 2022 the Defendant was required to attend a hearing before the High Court concerning the claim for committal to prison for contempt. He instructed lawyers and a barrister to attend, but he did not. I find that his failure to attend was intentional and yet another obvious public flouting of the order made by Eyre J. As a result, Williams J. issued a warrant for his arrest not backed for bail.

24. That warrant was executed that very evening and three police officers attended at the Land and informed the Defendant that he was to be arrested. I find that intentionally the Defendant refused to come down from his jerry-built pile of pallets. The police considered that it was not safe for one, two or three police officers to climb onto the pallets physically to effect an arrest. The Defendant informed the police that he would come down in his own good time the next morning and not before.

25. The police left that site at 9 p.m. that evening and the Defendant then, contrary to what he had told the police, climbed down from the wooden structure and left the site for good, leaving his wooden structure, his pit and various other items of rubbish and detritus for the Claimant to clear up.

26. On 5th September 2022 the Defendant appeared before me, having instructed solicitors and was represented by counsel. After a hearing lasting approximately two hours I discharged the arrest warrant and took his undertaking to attend on 6th September for the contempt hearing on various terms.

27. On 6th September the Claimant served his one and only witness statement in relation to the committal application. Of course, I take into account that the Defendant has no duty and is not required to say anything in his defence.

28. In that witness statement he accepted that he had been served with the injunction on 16th August, but asserted at paragraphs 1 and 2 various facts seeking to persuade me that, as a result of the words used by the High Court service operative, he thought the injunction only ordered him to leave the pit, not the Land, and so he thought he was perfectly entitled to build his wooden structure on top of the pit and continue occupying the land.

29. This rather unimpressive technical assertion was abandoned by the Defendant later in the day.

30. He also accepted the facts set out above, namely that he did not listen to the verbal warnings.

31. He apologised to the Court for breaching the injunction and stated he was willing to give an undertaking that he would not engage in any future incursions onto land injuncted in these proceedings. He did not offer in his witness

statement to undertake not to take direct action interfering with the business of the Claimant on the project henceforth.

Findings

32. I find as a fact that the Defendant's approach to the Court order was to flout it continuously and contumeliously, to publicise that he was flouting it and to worsen an already serous situation by building an unsafe wooden structure so that the police were unlikely to arrest him due to their potential to suffer injuries when climbing the unsafe structure.

33. I find that the Defendant refused to engage in the civil process which led to the injunction and refused to comply with the injunction intentionally and I find that he refused to comply with the warrant for the arrest issued by Williams J. Indeed, up until the morning of the hearing the Defendant was still trying to wriggle his way out of his responsibility for his breaches by suggesting that he thought the injunction only applied to order him out of the pit and permitted him to continue obstructing the progress of the construction of the pipeline in his wooden structure.

The Law

34. Contempt of Court proceedings have a procedure which is set out in CPR 81. That procedure governs the form of the application, the content of it and the form and content of the evidence.

35. The Claimant in this case has studiously followed the relevant procedures.

36. The procedure entitles a defendant to speak before sentence and I gave the Defendant the opportunity to do so and he chose not to.

37. The punishment or sanction available to this Court for contempt of Court includes imprisonment of up to two years, a fine, confiscation of assets, or other punishment permitted by law. The maximum sentence of imprisonment is two years. A sentence of imprisonment may be combined with a fine (see *the Contempt of Court Act 1981*). In addition, this Court is entitled to suspend any sentence of imprisonment pursuant to its inherent powers. Pursuant to the *Criminal Justice Act 2003* section 258 contemnors who are sent to prison are released after serving one half of the sentence.

38. The factors that this Court should take into account are well known and are set out in the Supreme Court Practice and also helpfully in *National Highways Limited v Heyatawin & Others* [2021]. The key general principles are as follows.

39. The Court has a broad discretion when considering the nature and length of any penalty for civil contempt:

> (a) it may impose an immediate or suspended custodial sentence, an unlimited fine, or an order for sequestration of assets;
>
> (b) the discretion should be exercised with a view to achieving the purpose of the contempt jurisdiction, namely (i) punishment for breach, (ii) ensuring future compliance with Court orders and (iii) rehabilitation of the contemnor.

40. The first step in the analysis is to consider, as a criminal Court would do, the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order. The Court should consider all the circumstances, including (but not limited to):-

i) whether there has been prejudice as a result of the contempt and whether that prejudice is capable of remedy;
ii) the extent to which the contemnor has acted under pressure;
iii) whether the breach of the order was deliberate or unintentional the degree of culpability;
iv) whether the contemnor was placed in breach by reason of the conduct of others;
v) whether he appreciated the seriousness of the breach;
vi) whether the contemnor has cooperated, for example by providing information;
vii) whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea;
viii) whether a sincere apology has been given;
ix) the contemnor's previous good character and antecedents;
x) and any other personal mitigation.

41. Imprisonment is the most serious sanction and can only be imposed where the custody threshold is passed. It is likely to be appropriate where there has been serious contumacious flouting of an order of the Court. Any term of imprisonment should be as short as possible, but commensurate with the gravity of the events and the need to achieve the objectives of the Court's jurisdiction. A sentence of imprisonment may be suspended on any terms which seem appropriate to the Court.

42. When considering sanctions I also take into account the guidance provided in *HS2 v Maxey and Hooper* [2022] EWHC 1010, a decision of Linden J.

43. In relation to mitigation, I take into account the judgment of Marcus Smith in *The Secretary of State and HS2 v Cuciurean* [2020] EWHC (Ch) 2723. He said:

> "A range of mitigating/aggravating factors then arise for consideration in that analysis. These include, but are not limited to those set out in *The Financial Conduct Authority v. McKendrick* [2019] EWHC 607 (Ch) at [23]:
> (1) Whether there has been prejudice as a result of the contempt, and whether that prejudice is capable of remedy.
> (2) The extent to which the contemnor has acted under pressure.
> (3) Whether the breach of the order was deliberate or unintentional.
> (4) The degree of culpability.
> (5) Whether the contemnor was placed in breach by reason of the conduct of others.
> (6) Whether he appreciated the seriousness of the breach.
> (7) Whether the contemnor has cooperated. A genuine offer following judgment but before sentence to cooperate in the provision of information is capable of being a serious mitigating factor.
> (8) Whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea. By analogy with sentencing in criminal cases, the earlier the admission is made, the more credit the contemnor is entitled to be given.
> (9) Whether a sincere apology has been given for the contempt.
> (10) The contemnor's previous good character and antecedents.
> (11) Any other personal mitigation that has been advanced on his behalf."

44. In addition, in this case I have regard to *R v Jones* [2006] UKHL 16 in which Lord Hoffmann said:

> "My Lords, civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police

> and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account."

45. Furthermore, because the Defendant is a conscientious objector, I take into account the guidance of Lord Burnett LCJ in R v *Roberts (Richard)(Liberty Intervening)* [2018] EWCA crim 2739 at paras. 33 – 34 et seq summarised thus:

> (1) By adhering to the conditions mentioned, a person who engages in acts of civil disobedience establishes a moral difference between himself and ordinary lawbreakers which it is right to take into account in determining what punishment is deserved.
> (2) By reason of that difference and the fact that such a protester is generally (apart from their protest activities) a law-abiding citizen, there is reason to expect that less severe punishment is necessary to deter such a person from further law breaking.
> (3) Part of the purpose of imposing sanctions, whether for a criminal offence or for intentional breach of an injunction, is to engage in a dialogue with the defendant so that he or she appreciates the reasons why in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law, or other people's activities, are contrary to the protestor's own moral convictions. Such a dialogue is more likely to be effective where authorities, including judicial authorities, show restraint in anticipation that the defendant will respond by desisting from further breaches.

46. I also take into account the decision of the Court of Appeal in *HS2 v Cuciurean* [2022] EWCA (Civ) 661 in relation to cost awards. I take into account the decision of the Court of Appeal in *HS2 v Cuciurean* [2021] EWCA (Civ) 357 in relation to the ingredients for liability for contempt and the custody threshold, in particular paragraph 81.

> "I see no grounds for disagreement with the Judge's conclusion that the custody threshold was crossed in this case. Contrary to the submissions of Ms Williams, there is no precise read-across from the statutory custody threshold in criminal sentencing and the standard that applies in contempt: see [18] above. The Judge cited binding authority on the right approach in the present context, and applied it conscientiously. It is, with respect, untenable to suggest that this case could and should have been dealt with by some lesser sanction. The submission that a mere finding of contempt would have been sufficient pays no heed to the need for deterrence, and the importance of upholding the rule of law. I am not impressed with the submission that in arriving at the period of six months the Judge took too literal an approach

> to the number of contempts, given that there were several incidents close in time. Again, this is to examine the reasoning under a microscope, when what matters is the overall outcome."

47. Furthermore, I take into account the decision of Marcus Smith J in *HS2 v Cuciurean* [2020] EWHC 2723 on sanctions. Those listening to this judgment will realise that although there was a different judge in that case, that case concerned a conscientious protester given 6 months in prison. That decision on sanctions imposed on Mr Cuciurean went up to the Court of Appeal and the suspended sentence of imprisonment was reduced to 3 months.

48. When imposing the sanctions set out below I take into account the Defendant's Article 10 and Article 11 rights under the *European Convention on Human Rights* and consider the sanction to be proportionate and necessary in the light of the facts set out above and the rights of the Claimant in relation to their project, staff, contractors and finances.

Conclusions – breaches and seriousness

49. I consider, Mr Breen, that you breached the order the ways set out in the application, namely in breach of an injunction granted by Eyre J. dated 16th August 2022 you Scott Breen:

> (i) failed to remove yourself and your possessions from the pit within 72 hours of service of the order,
>
> (ii) reinforced and extended a makeshift structure out of wooden pallets which you had previously erected on top of the pit, and
>
> (iii) obstructed the construction of the SLP project by remaining within the DCO order limit after having been requested by the Claimant to cease and desist from obstruction.

50. I find as a fact that you, Scott Breen, colluded with others to achieve obstruction of the business of the Claimant. Others were camped nearby, namely somebody who goes under the name of "Wolf". That other person assisted in the construction of the wooden shed and in the digging of the hole, and also provided food and sustenance to you throughout your occupation. I find that the occupation lasted for 16 days in breach of the injunction, i.e. 16 days after the date for deemed service, but 17 days in total after you actually received the order.

51. I find that your breaches are particularly serious in view of the huge cost of the project and the number of subcontractors that need to be organised to achieve success in the project, and also in view of the environmental factors that need to be taken into account to determine when the work is done at various sites by

the Claimant. Taking into account the prejudice to the Claimant and the harm to them, I find (without having been given precise figures) that the prejudice is likely to be in the tens of thousands of pounds and possibly in the hundreds of thousands of pounds.

52. Taking into account the question of whether you are acting under pressure or force from other people, or whether the conduct of others has pushed you into acting in the way that you have, I find that you, the Defendant, have carried out all your actions wholly independently, and intentionally.

53. Looking at whether your acts were deliberate or intentional, I consider that all of your actions, including the publicity, the posting of the first page of the injunction on social media, the avoiding of arrest and the failure to turn up at Court, were intentional.

54. As to culpability, I consider that your culpability is high. Not only did you intend to damage the Claimant's business, you intended to waste the time of the High Court bailiffs, the police and the Court Services by failing to engage sensibly and maturely in complying with the Court injunction and with the Court process.

55. In relation to insight, I consider that your witness statement dated 6th December discloses very little insight into the effects of your actions on others. You have not convinced me on the balance of probabilities that you have any insight into the damage you caused to those around you and the waste of money you caused to the emergency services, the police and the Court Service.

56. In relation to cooperation, as set out above, the Court is astute to be involved in a dialogue with conscientious protestors, and indeed to permit a reduction in the severity of sanctions where conscientious objectors are non-violent, cooperative, mature and interactive in their approach with the Courts. You have not been any of those. Quite the opposite. You have been arrogant, dismissive, and have sought to cause chaos by failing to engage in the process.

57. In relation to aggravating factors, I consider that those include refusing to leave for 16 to 17 days; building a structure after service of the Court order; social media posts taunting the Court's order and encouraging the public effectively to do the same; refusing to comply with a warrant for arrest; putting in a witness statement seeking to hoodwink the Court and refusing to listen to verbal warnings given by the security guards.

Custody threshold.

58. I have carefully considered the custody threshold. I consider that the seriousness of your breaches and the length of time for which you continued to

flout the Court order, your arrogant desire publicly to show your contempt for Court orders and your culpability and your lack of cooperation put your acts well beyond the custody threshold.

59. I have taken into account the sentencing guidelines and your rights under the *European Convention on Human Rights* . You have no dependents. You have no fixed abode. You do not offer any compensation to the Claimants financially.

Mitigation

60. I take into account that at the very last minute you admitted your breaches, you gave an apology and you offered an undertaking.

61. I consider that the appropriate sanction for your 16 to 17 days of breach together with the aggravating factors would be 185 days in prison.

62. To assist you in the way that I have calculated those days, I have allocated 5 days' imprisonment for each of the 16 days during which you refused to comply with the Court order to leave (5 x 16 = 80).

63. I have added 21 days for each of the following:

    i) building a structure on the land after service of the injunction;

    ii) social media posts in effect encouraging the public to disobey Court orders;

    iii) refusing to comply with the warrant for arrest;

    iv) putting in a witness statement seeking to hoodwink the Court;

    v) refusing to listen to verbal warnings given by security guards.

    That is five aggravating factors each attracting 21 further days in prison (5 x 21 = 105), amounting to a total of 185 days.

64. Taking into account the mitigation that I have set out above and the fact that you are a conscientious objector, I reduce that total by approximately 40% to 112 days in prison.

65. I pass an immediate prison sentence of 112 days. In addition, I impose a fine upon you of £1,500. I make no order for costs because no costs schedule was provided by the Claimant and so I am unable summarily to assess them.

66. Should that sentence be suspended? The Sentencing Guidelines urge this Court to weigh up the following factors:

(1) Whether the offender presents a risk or danger to the public. I consider you do. I consider that you think you are not bound by the law and you will do what you want. That means that you continue to be a danger to Esso and any other petrochemical company in times when in this country we may have inadequate supplies for heating of houses, schools, hospitals, churches and other establishments.

(2) Whether the appropriate punishment can only be achieved by immediate custody. I believe that is the only appropriate punishment, for you have publicised that you do not care about Court orders and urged that people should breach Court injunctions.

(3) Whether there is a history of poor compliance with Court orders. I have not majored on your antecedents as set out and agreed in the facts, but I do take those into account when looking at the history.

(4) Whether there is a realistic prospect of rehabilitation. You have rehabilitated yourself from one of the greatest challenges in life, which was drugs. You have the Court's sincere congratulations however you will need to rethink your approach on how you protest.

(5) Whether there is strong personal mitigation. I am hugely impressed by your getting off drugs, more power to you, stay off, but this is a bandwagon you may have to get off as well.

(6) Whether immediate custody will result in significant harmful impact upon others. That does not really apply in your case.

67. So I am sorry, I do not consider the necessary factors are in place for suspension and I do not intend to suspend that sentence.

END