

ROYAL COURT
(Samedi Division)

5th October, 1994

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Before: The Deputy Bailiff, and
Jurats Blampied and Vibert

<u>Between:</u>	Victoria Lee Smith	<u>Plaintiff</u>
<u>And:</u>	David Clifford Thomas	<u>Defendant</u>

Representation of the Plaintiff, alleging breach of injunction.

Advocate R.A. Falle for the Plaintiff.
Advocate P.C. Harris for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: On 23rd September, 1994, the Defendant in this case, David Clifford Thomas, was served with an Order of Justice by the Viscount Substitute which contained an interim injunction. That interim injunction restrained him from directly or indirectly contacting or molesting the Plaintiff, Miss Victoria Lee Smith, and in particular restrained him from seeking out and harassing Miss Smith at her home, her work, and known places of resort or work.

A Representation has now been made to the Court alleging that that injunction has been breached by the Defendant on a number of occasions. Without in any way minimising the other allegations which are made against the Defendant it is clear to the Court that two allegations in particular are very serious. The first is that on 24th September, 1994, when both the Plaintiff and the Defendant were in the "Buzz" public house in St. Helier, the Defendant approached the Plaintiff and told her that she was going to be "fucking sorry" that she had "started all this". In relation to that allegation counsel for the Defendant has reminded us that we must be satisfied beyond reasonable doubt that the allegation is made out. The Plaintiff's account of what took place has been corroborated to a certain extent by a witness, Mr. Darren Attwood, an off duty Police Officer, who gave evidence to the effect that he had seen the Defendant approach the Plaintiff and speak to her, whispering in her ear. He did not, however, hear what was said.

5 The Defendant admits that he did speak to the Plaintiff, but maintains that all he did was to ask why the Plaintiff was doing all this and that that was the extent of the remarks which he made to her. He denies that he issued any threat.

10 Having considered the matter carefully the Court cannot find that it is satisfied beyond reasonable doubt that the threat was uttered in the way suggested by the Plaintiff.

The Court will return, however, to the admitted breach of the injunction in respect of an utterance admittedly made by the Defendant.

15 The second grave allegation made against the Defendant relates to a different occasion on 2nd October, 1994, when it is said that at the same public house the Defendant approached the Plaintiff and uttered the words "I'm going to get you Smithy".
20 The evidence of the Plaintiff in regard to this incident was corroborated by an affidavit sworn by Miss Michelle Forde, who stated on oath that she was present when this utterance was made and that she heard it. The Defendant's evidence to us, after denying that those words were spoken, was that he was merely walking around and that he did not approach the Plaintiff in the manner complained of by her. In relation to this allegation the
25 Court is satisfied that the remark was made by the Defendant.

30 In addition there are admitted breaches of the Order made by the Court in that the Defendant concedes that earlier in the evening of 24th September, at a different public house, the Defendant blew kisses towards the Plaintiff who was working in those premises and said "goodnight" to her. That was clearly a breach of the Order which obliged him not to make contact with the Plaintiff.

35 Furthermore - and we return to the incident which took place later in the evening of the 24th September - it is admitted by the Defendant that he approached the Plaintiff in the "Buzz" public house and asked her in terms why she had sought this injunction
40 and why she had instituted proceedings against him.

45 The Court wishes to say that when it issues an Order addressed to a Defendant, that Order must be obeyed to the letter. The Defendant is under a duty to observe every part of the Order which the Court has made. We have been told that the Defendant has been advised, and it appears to us well advised, to keep away from premises in which he knows the Plaintiff might be. Counsel for the Plaintiff correctly put it to us that the Plaintiff is entitled to the protection of this Court and to the enforcing of
50 the Order which the Court has made and the Court endorses that submission.

In cases of flagrant breaches of the Court's Order the Court must consider the imposition of a custodial sentence. The Court has considered that possible sanction but has decided in this instance against the imposition of a prison sentence.

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Amongst other considerations, we think that the Plaintiff has a duty to avoid placing herself in situations where difficulties might arise. To enter premises where she knew the Defendant to be present seems to us to be imprudent. It is true that she is entitled to go wheresoever she pleases but equally she has a duty to be sensible and particularly while these proceedings are in train. We think that to converse in view of the Defendant with the Defendant's new girlfriend comes within the same category of behaviour. We express the hope that the Plaintiff will bear these remarks in mind in her conduct in the future.

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We wish, however, to close by issuing as clear a warning as we are able to muster to the Defendant that if any further breaches of the injunction are proved against him, the Court will take a much more serious view of the matter than it has found itself able to do this morning.

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In relation to the breaches of the injunction which it has found to be proved the Court fines you the sum of £150, or in default of payment, two weeks' imprisonment.

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No authorities.