

1984 November 15

[PICKIS, J.]

SAFARINO SHOE INDUSTRY & TRADING CO. LTD.,
Plaintiffs.

v.

SUNSHOES LIMITED,
Defendants

(Trade Mark Action No. 6/84).

Contempt of Court—Civil Contempt—Purged by subsequent submission to the order—Committal and sequestration rarely resorted to—Defendants not burdened with previous acts of disobedience to an order of the Court—Appropriate punishment a fine of C£200—Agreement between the parties for the settlement of the case— Does not of itself put an end to contempt proceedings. 5

On an ex parte application of the plaintiffs, in a trade mark action, an interim order was made restraining the defendants from infringing the registered trade marks of the plaintiffs. The defendants continued to make illegal use of the trade marks in defiance to the order of the Court; and hence these proceedings for their committal for contempt. After the filing of the committal proceedings the defendants complied with the order of the Court, discontinued use of the trade marks of plaintiffs and destroyed stocks produced in violation of the property rights of the plaintiffs. They, also, made amends to the plaintiffs satisfactory enough to lead to a settlement of the case, including an undertaking to pay the costs of the proceedings. 10 15

Held, (1) that agreement between the parties for the settlement of the case does not of itself put an end to contempt proceedings, because interest in the outcome of a civil contempt is not confined to the interest of the litigants in the matter because civil contempt affects the efficacy of the judicial process and generally the administration of justice; that where a contempt has been purged by subsequent submission to the order com- 20 25

mittal and sequestration are rarely resorted to; that the appropriate punishment in this case is a fine, relatively low in view of the purging of the contempt and the amends made but high enough to mark that disobedience of an order of the Court is under any circumstances a serious matter; and that taking into consideration in favour of the defendants the fact that they are not burdened with previous acts of disobedience to an order of the Court, they are ordered to pay a fine of C£200 (pp. 740-741 post).

10 *Defendants sentenced to a fine of C£200.*

Cases referred to:

Elliot v. Klinger [1967] 3 All E.R. 141 at p. 144.

Application.

15 Application by the plaintiffs for the committal of the defendants for contempt for disobedience of an interim order restraining them from infringing plaintiff's trade mark by unlawfully copying it in the production of shoes.

St. Nathanael for *L. Demetriades*, for the applicants.

20 *Chr. Kitromilides*, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. This is a trade mark action of the plaintiffs to restrain the defendants, shoe manufacturers, from infringing their trade mark by unlawfully copying it in the production of shoes and other consequential relief for the protection and restoration of their rights. On an ex parte application of the plaintiffs an interim order was made restraining defendants from infringing the registered trade marks of the plaintiffs. Notwithstanding service of an endorsed copy of the order made and knowledge gained thereby the defendants, as they admit and acknowledge, continued through a subsidiary or associate company, to make illegal use of the trade marks in defiance to the order of the Court. Hence the present proceedings for the committal of the defendants for contempt. Proceedings against the third parties, that is the aforementioned associate company of the defendants, were discontinued.

It is gratifying to notice respondents have complied with the order of the Court, discontinued use of the trade marks of plaintiffs and destroyed stocks produced in violation of the property rights of plaintiffs. Moreover, they made amends to the plaintiff's satisfactory enough to lead to a settlement of the case, including an undertaking to pay the costs of the proceedings. As counsel for the plaintiffs informed me, they have no further cause for complaint. The only outstanding matter is the punishment that the Court may, in its discretion, deem appropriate to impose for disobedience of the Order of the Court. Counsel for the condemnors laid stress on the fullness of the amends made, including costs, emphasizing it is the first time defendants disobeyed an order of the Court.

Both counsel, I am glad to note, appreciated that agreement between the parties for the settlement of the case does not of itself put an end to contempt proceedings, for interest in the outcome of a civil contempt is not confined to the interest of the litigants in the matter. Civil contempt affects the efficacy of the judicial process and generally the administration of justice.

An order of the Court is no less a command of the law than the provisions of a statute, more direct still in that it specifies what ought to be done or what ought not to be done. Invariably disobedience of the order of the Court undermines the effectiveness of the judicial process, a defiance of far reaching social repercussions. Obedience to orders of the Court constitutes one of the foundations of civilized life.

Without exception Courts take a serious view of acts of disobedience of orders of the Court. Naturally we view with less stringency purged acts of contempt, that is, contempts cleared by a subsequent obedience to the order, especially if accompanied by proper amends to those immediately injured by the contempt. It is difficult to establish a pattern for punishment for purged civil contempts in the above sense for it is peculiarly connected with the facts of the case. Where a contempt has been purged by subsequent submission to the order, committal and sequestration are rarely resorted to. A fine is an alternative remedy but not the only alternative remedy(1). The Court may, at its discretion, grant an injun-

(1) See Halsbury's Laws of England, 4th Ed., Vol. 9, paras. 101-106.

ction in lieu of another punishment to restrain the commission of a civil contempt(1). However, an injunction may be resorted as a means of punishment if there is a likelihood of future repetition of the acts complained of, a risk that is hopefully inexistant in this case because of an overall settlement of the case.

In my judgment the appropriate punishment in this case is a fine, relatively low in view of the purging of the contempt and the amends made but high enough to mark that disobedience of an order of the Court is under any circumstances a serious matter. The defendants are ordered to pay a fine of C£200.— The fact that defendants are not burdened with previous acts of disobedience to an order of the Court is a factor that weighed heavily in their favour. But let this warning be administered to them: In case of future acts of disobedience to an order of the Court, they can expect no lenience from the Court.

I make no order as to costs in view of the statement of counsel that this matter has been settled.

Defendants ordered to pay £200.— fine.

(1) *Elliot v. Klinger* [1967] 3 All E.R. 141, 144.