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THE MAGISTRATES COURT OF

WESTERN AUSTRALIA

CIVIL

(Restraining Order)

JO 1057 of 2009

WALTER STEVEN VERMEULEN

and

MARGARET THERESA CUNNIFFE

BEFORE: MAGISTRATE FLYNN

TRANSCRIPT OF PROCEEDINGS

AT JOONDALUP ON FRIDAY, 9 OCTOBER 2009

9/10/09
(s&c)

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VERMEULEN, WALTER STEVEN affirmed:

HIS HONOUR: Good morning. I will just get you to say your name and date of birth for the tape?---Walter Steven Vermeulen. My date of birth is 17/1/1959.

All right. Mr Vermeulen, just give me a moment to read your affidavit and we will go from there?---Sure.

All right. I've read the affidavit which you have just signed this morning, or yesterday, is it?---Yesterday, that's right.

Yes, all right. Now, I'm just trying to have - what's - Ms Cuniffe moved into your house about four months ago? ---That's right, yes.

What is your relationship with her? How would you characterise that?---I had a romantic relationship with her for a few weeks.

All right?---And it didn't last and I think - - -

And that was about the time that she moved in, was it? ---That's right, yes.

So you are saying the relationship ended maybe three months ago?---In a romantic fashion, yes.

Was there a discussion about what would happen then in terms of living arrangements?---Yes, she was homeless at the time and I offered her the use of my house and the discussion then was, "Look, just camp in the back bedroom until you find your feet and move on".

I see, so she moved in after the relationship ended or - - -?---Well, look, what actually happened was, just one day when I was at work, she just moved in.

All right?---She had a key because she was using my office to work. She was, at the time I met her she was living with her sister and I didn't realise it, but her sister evicted her from the home, so she was using my office facilities at home. I'd given a key whilst I was at work she could use my office at my home and then one day she said, "Well, I've moved in because I've been thrown out of my sister's house."

All right, and it was after that that your relationship started it or - - -?---It was - our relationship ends at that point - - -

Okay, okay?---And I felt - - -

Okay, she moved into another room, a room that - - -? ---Yeah, I felt sympathy for her because well, she'd just

come back from London. Her health was pretty poor and she had nowhere to live.

How long have you lived at this house?---13 years.

Do you own the house or are you renting it?---I rent the house.

Does anyone else live there?---Yes, I have a border, I have a young Korean student boarding with me. She's been boarding with me for about 18 months.

All right?---And at the time that Margaret moved in I had another border as well.

Now, the behaviour of Ms Cunniffe that concerns you or the most recent incident is her threatening to get a restraining order against you. Is that right?---Margaret has been - in every email and every SMS she sends me now there is the threat that, "Steve, get out of my house" - this is my house that I have been in for 13 years and I extended her the courtesy. She doesn't pay rent. There's no agreement between us. She says, "Steve, get out of my house because you're violent and abusive, and I'll sort you out and if you don't stop touching my stuff", and her stuff is spread all through the house, I can't not move in my own house without - then, "I'll get a restraining order against you because you're a violent and abusive person." The reason she keeps saying this is because I've been asking her for weeks and weeks, "Please, Margaret, you must move out because I can't live this way."

Right, so you've asked her to leave. She's sent communications with you saying that you're violent and abusive?---Yeah, and I know exactly where this is heading. She will then - she does get me very angry. I mean I have now fled my own house, okay. I'm about to lose my house. My landlord has lost all faith in me. She has sabotaged my business. I'm about to - - -

So your something's lost faith in you, what did you say? ---My landlord. I've been in a precarious financial situation for ages.

Okay, so you are leasing the house?---That's right, yes. I've leased the house for 13 years from this guy. I mean we actually get on pretty well.

Yes?---But my situation has been perilous for the last year. I'm separated, about to be divorced. It hasn't been a very good time for me.

Yes?---Margaret has basically keeps threatening, "You come near me, Steve, I'll get you arrested", and I'm just terrified to go to my own house. She's now been burning my possessions in my house.

All right, when did that happen?---That happened a day ago.

Yes?---The older border that's there, Sujin, is fleeing the house. She's dead scared. I can show you the text that she sent. Margaret spends a lot of her time drunk. I don't know what my remedy is. I've been to the police and they've said, "Come and get a restraining order so you can get her removed from the house". I'm absolutely - - -

How often does she send you these emails about and threatening?---About three or four times a day and she always takes a very calm tone. "Steve, you're such an unreasonable person. I don't believe this behaviour and if you could stay away from" - she keeps saying "My house" as in my Twickenham Drive, she says, "My home". It's not her home at all.

And you say that in terms of her statements in these communications about you being violent or aggressive, what do you say about those statements from her?---Look, I had a very bad - I'm not violent, your Honour, okay. I had a very bad situation with a very ill daughter two years ago who brought an aggravated assault charge against me.

Yes?---That hung around me for 10 months.

That's fine?---I'm sorry.

That's all right, that's all right, take your time, that's all right. How was that resolved, that charge ultimately. Was it - - -?---On the morning of the trial, my daughter withdrew her statement to the police and the police - - -

So there was no - that was no conviction?---Yeah, and the police said halleluiah because it was one of those situations - - -

Anyway, all right, so there was no conviction?---No conviction.

All right?---I - in confidence I have explained to Margaret what had happened because she caught me in a moment where I was - I was quite emotional. She said, "What's wrong?" I told her. Every conversation now she uses that, "Well, you beat your daughter up, that's why you haven't seen your daughter for two years", blah, blah, blah.

But just speaking about - just in your dealings with Margaret Cunniffe, have you - what would you say if in terms of your dealings with her, how would you describe - has your frustration manifested itself in what ways?---My frustration have manifested itself because I've just lost my temper with her on several occasions because I keep asking her, "Look, can you just please leave?", and she says, "No, Steve, this is my house and you must leave", and

that becomes an almost - it's an irrational statement she throws back at me and I'm afraid I do react to it. Margaret does collapse and pass out drunk at least once or twice a week and I can bring you evidence of this. I've got witnesses who are prepared to come to court and say this.

All right, and you say that - - -?---And her body is covered in bruises because of this and she said to me, "Well, Steve, see the bruises, all I have to do is call the police and you are gone".

And you say that - - -?---I get angry when she says that to me.

And you say that she jack-hammered - "My bedroom door was jack-hammered open (indistinct)?---Yeah.

What do you mean by jack-hammered?---I lock my bedroom door with a lock and a key.

Yes?---She went to my shed. I have a large construction jack-hammer.

Yes?---She pulled out that jack-hammer and she jack-hammered open my bedroom door.

How do you that she used that to do that? How do you know that?---Because I have a witness who is prepared to come to court and say - - -

Someone told you that they saw it?---Yes, that's right, she texted me at the time it was happening and said - - -

Who was that?---That was the other border in the house, Sujin. She said, "I'm terrified, please help me, Steve". By the time I got home it was all over. When I asked Margaret about it, she denied it. The tools in my shed, my door's jack-hammered open is destroyed. I've locked her out of my bedroom because she keeps coming into my bedroom. I'm trying to distance myself from her.

Yes?---I think - - -

All right, I've heard enough today that I will make a restraining order?---Yes.

I'll just give some reasons and make an order?---Okay.

This is an application for a restraining order. The applicant is Walter Vermeulen, and the respondent is Margaret Cunniffe. Mr Vermeulen's evidence is in the form of an affidavit, supplemented by his evidence today. The parties were in a brief relationship and shortly after that, Ms Cunniffe moved into the house that Mr Vermeulen resides in. It's a house that he rents. He's been there

for 13 or 14 years. Mr Vermeulen's evidence is that the relationship between the parties has deteriorated since she has moved in. His evidence is that typical of the conduct of Ms Cunniffe is to insist that Mr Vermeulen leave the house and that she has threatened to bring restraining order proceedings and make, on Mr Vermeulen's evidence unfounded allegations in order to prosecute such a restraining order proceeding. Mr Vermeulen's evidence is that in addition to that behaviour, Ms Cunniffe has damaged a door of his bedroom and has burnt papers, personal papers of his. Before I can make a restraining order I have to be satisfied that Mr Vermeulen has a reasonable fear of an act of abuse. An act of abuse includes ongoing behaviour which is offensive. Bearing in mind the conduct of Ms Cunniffe, as I have described it, I'm satisfied that Mr Vermeulen has a reasonable fear that that will continue and it's a matter of primary importance that he be protected. Of course this is - I've only heard Mr Vermeulen's evidence and I have to consider any hardship that's caused by any order that I make. It's obvious that the parties cannot continue to reside together and there will be hardship in making an order in that Ms Cunniffe will have to live somewhere else. However, accepting Mr Vermeulen's evidence that he's been the resident of this house for 13 or 14 years, that Ms Cunniffe has only been a resident for a relatively short period, I'm satisfied that, although there will be hardship, it's nevertheless appropriate that I make the order. All right, so the order will be that Ms Cunniffe cannot communicate or attempt to communicate with you. She cannot enter or remain upon 178 Twickenham - - -? ---Twickenham Drive, yes. She's currently there. I know she's going out tonight.

Kingsley, and she can't be within 100 metres of the boundary. She cannot approach within 20 metres of you. She cannot behave in a way which is intimidating or offensive towards you. She can't cause anyone else to do any of those things. She may recover personal property from the address, but only in the presence of a police officer. This order commences when it's delivered and it lasts for a period of two years. If Ms Cunniffe breaches the order for example by contacting you, you should call the police. You have to be careful you don't encourage her to breach the order, so you should not contact her?---Yeah.

If Ms Cunniffe objects to the order, then both parties come to court and we go from there?---Yes, I understand.

Right. Did you have any questions?---Currently I've fled my house because I don't want a situation where she calls the police.

Yes?---I am aware that she will be out of my home tonight.

Yes?---I intend - (indistinct) wants to go to my home tonight and change the locks. I don't know, I've spoken to

(indistinct) am I allowed to do that. I just want my home back.

Yes. Well, I can't give you advice about that. There's nothing - - -?---I know, your Honour, I'm sorry, your Honour, I - - -

There's nothing stopping you going wherever you like and there's nothing stopping you doing whatever you want so long as it's doesn't break any law?---Yeah.

This order will be sent to the police today and they would normally move within 24 or 48 hours?---Okay.

You can stay in contact with the - if you ring the - - -? ---I might just stay away from my house then for a couple of days.

All right, it's a matter for you?---Yes.

All right. By contacting the - we should be able to give you - by contacting the court you can find out where the restraining order was sent to be delivered and then you can contact the police and find out when it's been served? ---Okay, yes, so my best course of action is just to stay well away until I - - -

It's a matter for you?---Yes.

Thank you?---Okay, thank you very much, your Honour.

(THE WITNESS WITHDREW)

AT 10.19 AM THE MATTER WAS ADJOURNED ACCORDINGLY

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