IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST
[2020] EWHC 1033 (QB)

No. QB-2020-0003686

Royal Courts of Justice
The Strand
London, WC2A 2LL

Tuesday, 16 March 2021

Before:

MR JUSTICE NICKLIN

B E T W E E N :

STEPHANIE REBECCA HAYDEN — Claimant

- and -

DARREN DUCKWORTH — Defendant

THE CLAIMANT appeared in Person.

THE DEFENDANT did not attend and was not represented.

J U D G M E N T
(via MS Teams)

MR JUSTICE NICKLIN:

1. The Claimant, Stephanie Hayden, has brought a claim against the Defendant, Darren Duckworth, over three postings the Defendant made on Twitter between 30 September 2020 and 17 October 2020. The Claimant has alleged that the Tweets were harassing of her, that they amounted to a misuse of private information, and that they also libelled her.

2. The three Tweets are as:

   a. 30 September 2020 (exactly as it appeared):

      "is 'Fat Tony' the @flyinglawyer73 account [not a real lawyer… a bit too thick]"

      ("the First Tweet")

   b. 5 October 2020 (redacted):

      "I am told you can sued if anyone posts that someone called Stephanie Hayden who pretends to be a lawyer @flyinglawyer73 has a conviction [redacted]. Not sure why @reporterlal is trying to shut people up, but they are failing miserably"

      ("the Second Tweet")

   c. 17 October 2020 (exactly as it appeared):

      "lol… gets away with it by telling twitter it stands for 'Fucking Lying Lawyer' while letting people think they are one. Flyinglawyer the great pretender trying to earn a living suing those they hate. Mental health issues are beyond repair"

      ("the Third Tweet")

3. I have redacted part of the Second Tweet. That is because it includes details of a previous conviction of the Claimant which is spent under the provisions of the Rehabilitation of Offenders Act 1974. The issue, and therefore the need for redaction, arose in an earlier claim by the Claimant, that was *Hayden v Dickinson* [2020] EWHC 3291 (QB) [5]-[7], and I shall adopt the same approach in this judgment.

4. The Claim Form was issued on 19 October 2020. The Claimant sought damages in excess of £50,000 but not greater than £100,000, and also an injunction.

5. On 22 October, the Claimant sought and was granted an *ex parte* injunction without notice to the Defendant. The application was supported by the Claimant's First Witness statement dated 19 October 2020 ("the First Witness Statement"). The injunction restrained the Defendant until a return day fixed for 30 October 2020 from:

   "(A) [publishing] in any form whatsoever online or offline anything directly or indirectly stating, implying or inferring [sic] that the defendant has been convicted of a criminal offence which can be considered spent pursuant to the Rehabilitation of Offenders Act 1974; and

(B) [publishing] in any form whatsoever anything relating to these proceedings."

6. On 30 October, the return date, the Court heard the Claimant's application to continue the interim injunction. The application was supported by the Witness Statements of the Claimant dated 27 and 30 October 2020 ("the Second and Third Witness Statements"). By that stage the application was on notice to the Defendant. The Court continued the interim injunctions in terms of paragraph (A) but not paragraph (B), which was a form of super injunction. The Court also made a mandatory order against the Defendant requiring him to delete the Second Tweet, and a further Tweet posted at 16.12 on 20 October 2020 (which also posted details relating to the spent conviction). The Claimant has confirmed that the Defendant complied with the order requiring him to remove those two Tweets.

7. The Order of 30 October 2020 also contained a reporting restriction order in the following terms:

> "No report of these proceedings may include publication of anything linking the name of or identity of the claimant to any criminal conviction which can be considered as spent pursuant to the provisions of the Rehabilitation of Offenders Act 1974."

8. The Defendant was served with the Claim Form on 27 October 2020, and with the Particulars of Claim on 16 November 2020. He has not filed an Acknowledgement of Service or a Defence within the time allowed by the CPR or at all.

9. On 8 December 2020 the Claimant issued an Application Notice seeking judgment in default on the entire claim, pursuant to CPR 12.(3)(1), "for damages to be summarily assessed pursuant to ss.8-9 of the Defamation Act, and a final injunction, alternatively for damages to be assessed for misuse of private information and harassment". The Application for default judgment was supported by a further witness statement of the Claimant dated 8 December 2020 (the “Fourth Witness Statement"). The Application Notice indicated that the Claimant had attached a draft of the order that she was asking the Court to make.

10. There is little doubt that the Defendant is aware of these proceedings. In the Second Witness Statement the Claimant produced evidence of a YouTube video posted by the Defendant showing him apparently burning the envelope of documents that he had received from the Claimant. More recently, the Defendant was sent a letter by the Court office notifying him of today's hearing. Following receipt, he emailed the Court on 25 February 2021. It is not necessary for me to set out the full terms of this email, which included further abuse of the Claimant, suggested that she was a vexatious litigant, and contained a statement that he would “be knocking on [the Claimant's] door if the harassment continues". The email concluded with the sentence, "I will not be attending, got better things to do". True to his word the Defendant has not attended the proceedings today. He has not contacted either the Court or the Claimant to indicate why he has not attended. It is tolerably clear that he has made a choice not to do so.

11. The Claimant has also filed two further witness statements in support of her default judgment application. One is from Simon Just, dated 28 February 2021; and one from the Claimant dated 2 March 2021 (the "Fifth Witness Statement"). These further witness statements were sent to the Defendant on 2 March 2021.

12. In the Fifth Witness Statement, as well as setting out the Defendant's non-engagement with the proceedings (and with particular reference to his email to the Court of 25 February 2021) the Claimant included a section of her statement headed, "Escalating and ongoing conduct of the Defendant". In it, the Claimant states that she took the Defendant's threat to knock on her door seriously. Following receipt of the Defendant's email to the Court, the Claimant states that she checked Twitter to see whether the Defendant had made any further posts. She had not previously been aware of any because she had blocked the Defendant. Attached to her Fifth Witness Statement are several Tweets by the Defendant posted between 20-26 February 2021. It is not appropriate to set these out. They are described in the Fifth Witness Statement, and I have read them. The language used is threatening and unpleasant. The Claimant confirms in the Fifth Witness Statement that she has reported this recent activity of the Defendant to the police.

13. The statement of Simon Just provides evidence of an alleged incident between Mr Just and the Defendant in 2014. Mr Just decided that he wanted to tackle what he described as "an epidemic of online trolling" by identifying some of the "culprits" on a blog site. Postings of the Defendant were identified on the blog site. This apparently led to the Defendant being dismissed, ultimately, from a voluntary position. Mr Just says that the Defendant has, since this incident, been "obsessed with [him]". From his statement, it is clear that there is now a significant history between Mr Just and the Defendant. It was not apparent to me the relevance of this material to the Claimant's claim, perhaps except in relation to the ongoing threat of, and the need for an injunction against, further harassment. I need say no more about this as, today, the Claimant has indicated to the Court that she is content to proceed only with her claim for misuse of private information, and to seek judgment on that claim alone. That is a sensible and pragmatic approach for the Claimant to adopt because there are, for reasons I will explain, some difficulties with the Court entering judgment in relation to the harassment and defamation elements of the claim at this stage.

Default Judgment: The Law

14. The Claimant referred me, in her Skeleton Argument, to the decision in *New Century v Makhlay* [2013] EWHC 3556 (QB) in which Carr J held [30]:

> "A default judgment on liability under CPR Part 12 is a final judgment that is conclusive on liability. The Particulars of Claim are, in effect, a proxy for the judgment, setting out the basis of liability. Once judgment is entered, it is not open to a defendant to go behind it. Damages of course still have to be proved, and a defendant can raise any issue which is not inconsistent with the judgment – see the White Book 2013 notes to CPR 12.4.4."

15. This led her in her Skeleton Argument to submit that:

> "…given the nature of the default judgment (as set out in *Makhlay*) the court is bound to proceed on the basis that [the Claimant] has proved all elements of the causes of action on which she relies, i.e., harassment, defamation and misuse of private information. In particular, the Claimant must be treated as having satisfied the likelihood of serious reputational harm test in respect of defamation."

16. It is important to note that, in *Makhlay*, judgment in default had already been granted. In the current case, the Claimant is applying for default judgment. The hurdle that a Claimant must

surmount in order to be granted default judgment is not high, but it is not quite the automatic process that the Claimant had suggested in her Skeleton Argument.

17. Warby J identified the approach the Court should adopt in relation to default judgment in *Brett Wilson LLP v Persons Unknown* [2016] 4 WLR 69 [18]-[19]:

> "[18] The claimant's entitlement on such an application is to 'such judgment as it appears to the court that the claimant is entitled to on his statement of case': CPR 23.11(1). I accept Mr Wilson's submission that I should interpret and apply those words in the same way as I did in *Sloutsker v Romanova* [2015] EWHC 2053 (QB) [84]:
>
> "This rule enables the court to proceed on the basis of the claimant's unchallenged particulars of claim. There is no need to adduce evidence or for findings of fact to be made in cases where the defendant has not disputed the claimant's allegations. That in my judgment will normally be the right approach for the court to take. Examination of the merits will usually involve unnecessary expenditure of time and resources and hence [be] contrary to the overriding objective. It also runs the risk of needlessly complicating matters if an application is later made to set aside the default judgment: see *QRS v Beach* [2014] EWHC 4189 (QB), [2015] 1 WLR 2701 esp at [53]-[56]."
>
> [19] As I said in the same judgment at [86]:
>
> "the general approach outlined above could need modification in an appropriate case, for instance if the court concluded that the claimant's interpretation of the words complained of was wildly extravagant and impossible, or that the words were clearly not defamatory in their tendency."
>
> Those instances of circumstances which might require departure from the general rule are not exhaustive, but only examples. I have considered whether there is any feature of the present case that might require me to consider evidence, rather than the claimant's pleaded case, verified by a statement of truth and uncontradicted by the defendants. I do not think there is any such feature. I have therefore proceeded on the basis of the pleaded case, both in my introductory description of the facts above, and in reaching the conclusion that the claimant has established its right to recover damages for libel, and to appropriate injunctions to ensure that the libel is not further published by the defendants."

The Claimant's pleaded case:

18. The relevant facts pleaded in the Particulars of Claim are as follows:

    a. The Defendant's Twitter account had 2,630 followers on 6 October 2020, paragraph 1;

b. The First, Second and Third Tweets referred to the Claimant, paragraph 8;

Defamation claim

c. The First, Second and Third Tweets, both individually and collectively are defamatory of the Claimant, paragraph 7;

d. The natural and ordinary meaning of the First, Second and Third Tweets 'individually, collectively or both' is

> "Stephanie Hayden who is "Fat Tony" and "@flyinglawyer73" pretends to be a lawyer, and has a conviction [redacted]. She gets away with it by lying to Twitter and being a great pretender, trying to earn a living suing those they hate, and has mental health issues beyond repair".

e. As to serious harm under section 1 of the Defamation Act 2013, the First, Second and Third Tweets:

i. "…are likely to cause serious harm to the reputation of the Claimant in that they convey the imputation that the Claimant has a subsisting conviction for [redacted], a serious criminal offence, and the Claimant dishonestly holds herself out as a lawyer whilst having no legal qualifications, intellectual ability or experience to do so. Further that the Claimant abuses the legal process to dishonestly earn a living whilst having serious mental health issues", paragraph 10;

ii. "Further or alternatively, by tagging the Claimant's Twitter username of @flyinglawyer73 the Defendant published his Tweets in a manner calculated to ensure that the Tweets were visible to and read by the Claimant's followers on Twitter. The status of many of the Claimant's Twitter followers is such that the words published by the Defendant were likely to cause serious harm to the reputation of the Claimant within the legal, journalistic, political and academic professions. The Claimant is a current affairs commentator and lawyer. Further, the Claimant appears as a contributor on international television, and has provided commentary for RT UK news and BBC news, (television and radio)", paragraph 11;

f. The Defendant's Tweets were published with malice, paragraph 12;

Harassment claim

g. The First, Second and Third Tweets collectively constitute a course of conduct, and individually and collectively constitute acts of harassment by the Defendant which the Defendant knew or ought to know was likely to harass the Claimant. The Tweets were calculated

to (and did) degrade, humiliate, alarm and distress the Claimant, paragraph 14;

Misuse of Private Information

h. The Second Tweet disclosed information about a spent conviction in respect of which the Claimant had a reasonable expectation of privacy;

Damages

i. The Claimant has suffered loss and damage by reason of injury to reputation, feelings, distress, anxiety and loss of autonomy, paragraph 24;

j. The following particular conduct of the Defendant has aggravated the damages, paragraph 22. His conduct:

   i. was calculated to and did cause the Claimant distress, anxiety and injury to feelings;

   ii. constitutes the targeted harassment of the Claimant;

   iii. targeted the Claimant by reason of the Claimant's protected characteristic of gender reassignment; and

   iv. was part of a series of acts calculated to harass and humiliate the Claimant

k. The Defendant's Tweets were published with malice, paragraph 12;

l. The Claimant relies upon the conduct of the Defendant during the course of the proceedings insofar as he: (a) fails to apologise to the Claimant; (b) continues to harass the Claimant; (c) continues to defame the Claimant; and /or (d) repeats or makes any false allegations against the Claimant, paragraph 23;

Injunction

m. Included in the prayer for relief, is a claim for "a final injunction pursuant to s.3A Protection from Harassment Act 1997, in terms of the interim injunction order granted on … 30 October 2020".

19. Before Ms Hayden narrowed her case to the misuse of private information claim, the Court's task would have been to consider such judgment as it appeared to the Court the Claimant was entitled to on her statement of case in respect of each of the causes of action that she had relied upon. Given the concessions made by the Claimant today, it is not necessary for me to go in detail through the defamation and harassment claims. I will limit myself to some few observations.

Defamation

20. The important aspect that would have needed to be addressed today was the question of whether the factual averments in the Particulars of Claim were sufficient in order for the Claimant to have demonstrated an entitlement to judgment, having regard to the requirements of s.1(1) Defamation Act 2013. The Claimant's pleaded case on serious harm to reputation may not disclosed a case on which default judgment could have been granted.

Harassment

21. The issue to be addressed in any harassment case is whether the relevant act(s) of the defendant amounts to harassment. The law is set out in *Hayden v Dickinson* [40]-[44]. A claimant must show that he acts of alleged harassment are sufficiently serious to sustain a claim for harassment under the Act. Again, there may have been an issue as to whether the Claimant's pleaded claim was sufficient to enable default judgment to be entered against the defendant.

Misuse of Private Information

22. The relevant law relating to misuse of private information can be taken from *Hayden v Dickinson* [45]-[49].

23. I am satisfied on the basis of the facts pleaded in the Particulars of Claim that the Claimant is entitled to default judgment on the claim for misuse of private information arising from the publication of the Second Tweet, which included details of the spent conviction. I reach this conclusion largely for the same reasons as set out in *Hayden v Dickinson* [84]. There is no obvious legal flaw to this claim. As the Defendant has not advanced any defence, he has not advanced any countervailing justification for the interference with the privacy interests of the Claimant. I am satisfied therefore that the Claimant is entitled to be granted default judgment on this aspect of her claim.

Injunction

24. The Claimant was granted an interim injunction in terms set out in [5(A)] above. Although an injunction is not granted automatically following default judgment, I am satisfied on the evidence provided by the Claimant that she is entitled to an injunction as part of the final judgment on that aspect of the claim relating to misuse of private information. On the evidence, particularly that contained in the Fifth Witness Statement of the Claimant, I am satisfied that if the Court were not to grant an injunction, then it is likely the Defendant will further publish details about the Claimant's spent conviction. If he considers that there is a justification for doing so, then he can apply to set aside the judgment in default.

25. The terms of any injunction must be considered carefully. A restriction on an Article 10 right must be necessary and proportionate. Even where, as here, the Court is satisfied that an injunction is necessary, proportionality requires the Court to carefully consider whether a lesser form of order might achieve substantially the same aim.

26. The Claimant's complaint is about the Defendant's posting on Twitter. There is no other evidence of his publishing details of the Claimant's spent conviction on any other forum. The form in which the interim order was granted was not ideal. An injunction should specify precisely what the Defendant cannot do. Inserting concepts such as "spent" under the Rehabilitation of Offenders Act 1974, would require either special knowledge of those

provisions, or advice to be taken from a lawyer. I appreciate that the injunction was granted in these terms in order not to include, on the face of a public order, that which the Claimant was seeking to protect. In my judgment, the way to accommodate that in circumstances like this is to put the detail of the prohibition in a confidential schedule. That is the practice that is recommended in the model order attached to the **Practice Guidance (Interim Non-Disclosure Orders) [2012] 1 WLR 1003**, and it is the practice I shall adopt in relation to this case.

27. In my judgment therefore the final relief should be tailored to this wrongdoing. I will grant a final injunction in the following terms:

> "The Defendant must not publish on Twitter or any other online platform anything directly or indirectly stating or implying that the Claimant has been convicted of a criminal offence identified in the confidential schedule to this Order".

Whilst the public order, including the terms of that injunction, will be available to all, the confidential schedule will only be available to and served upon Mr Duckworth. That achieves both the importance of open public justice, and proper access to the records of the Court, and the terms of the injunction that have been made, but ensures that specific terms of the injunction, which make clear to Mr Duckworth what he can and cannot do, are limited to him only. That is the way in which the Court accommodates the competing rights in cases like this.

Damages

28. The principles to be applied in awarding damages for misuse of private information have recently and authoritatively been stated by Warby J in *Sicri v Associated Newspapers Limited* [2021] 4 WLR [9], [138]-[144]. It is important to note that a formal damage to reputation cannot be recovered in a claim for misuse of private information: [163].

29. The Claimant has invited the Court to assess damages today. Again, that is a sensible and pragmatic approach. An application for default judgment can instead be dealt with in two stages, first the default judgment itself (and any injunction), and then a subsequent hearing to deal with an assessment of damages. That practice has been adopted in several cases, for example, in the recent case of *Glenn v Kline*.

30. As recognised in *Makhlay* [30], a claim for damages has to be proved by the Claimant, and default judgment does not bar a defendant against whom judgment has been entered from defending the claim for damages, so long as the issues raised do not conflict with the default judgment.

31. I am satisfied that Mr Duckworth is fully aware that Ms Hayden was going to ask the Court to determine the issue of damages today. He has been given every opportunity to consider the material on which she intends to rely for the purposes of that assessment today, and he has chosen not to engage with it. Again, the safeguard in his respect is that he can always apply to set aside the judgment in default that is granted, including any award of damages.

32. In the witness statements filed by the Claimant, there was only limited material about distress and upset said to have been caused by the publication of details of a spent conviction in the second Tweet. Realistically today, Ms Hayden has accepted that she does not regard the impact on her feelings and anxiety as being substantial. She described it as

minimal, and she accepted that it would be an appropriate case for the Court to award what she described as "modest damages", and she made reference to the familiar *Vento* bands.

33. The pleaded case is the publication of the second Tweet has caused distress to the Claimant. I can accept that. It is not a fanciful suggestion. Perhaps more importantly the publication of information about the spent conviction undermines the Claimant's statutory rehabilitation. In that respect, in my judgment, there is a significant loss of autonomy. Balanced against that the extent of the publication is limited, and the Court has granted an injunction, and did so at an early stage, and the Tweets have been removed following the mandatory injunction the Court granted on 30 October 2020.

34. Taking those factors together, and awarding a sum that is proportionate, I consider that the damages for misuse of private information should be assessed at £1,500.

35. The fact that I have today refused to grant default judgment to the Claimant on her claims for harassment and defamation does not mean that those are necessarily at an end. It is for the Claimant to decide, if she considers in light of the judgment granted on the misuse of private information claim, whether to seek to pursue the other claims, but she may well take the view that she has achieved largely what she could hope to achieve in relation to this matter, and that this may be the point at which these proceedings come to an end.

CERTIFICATE

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This transcript has been approved by the Judge.