



Neutral citation: [2021] EWHC 2529 (QB)

Case No: QB-2021-00293

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20/9/2021

Before :

**THE HONOURABLE MR JUSTICE PEPPERALL**

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Between :

- (1) AAA plc
- (2) BBB Limited
- (3) CCC Limited
- (4) DDD plc
- (5) EEE Limited

**Claimant**

- and -

**PERSONS UNKNOWN**

(responsible for demanding money from the First  
Claimant on and/or after 21 July 2021)

**Defendant**

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**Joseph Howard** (instructed by **Morrison Solicitors LLP**) for the **Claimants**  
There being no appearance by the **Defendant**

Hearing date: 30 July 2021

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**Approved Judgment**

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**THE HONOURABLE MR JUSTICE PEPPERALL:**

1. On 21 July 2021, the directors of AAA plc became aware that unknown persons purporting to be investors in the company had published a website accusing AAA together with various associated companies (BBB Limited, CCC Limited, DDD plc and EEE Limited) of fraud. The purported investors had also placed a paid advertisement with Google thereby causing their website to be prominently displayed upon any Google search for AAA. In addition, they created other social media accounts on which similar claims of fraud were made. On the same day, AAA instructed an American cyber investigator, Mr X, to investigate these matters. He was able to make contact with the people behind these events who promptly demanded payment for taking down the website, closing the social media accounts and desisting from the same conduct in respect of BBB, CCC, DDD and EEE.
  
2. By this application, the companies apply without notice for an injunction to require the website to be taken down, the social media accounts closed and to restrain further publication of the allegations against these companies. I heard the application in private on 30 July 2021. At the end of the hearing, I granted an interim injunction pending an inter partes hearing. This is my judgment explaining the reasons for my order.

**DEROGATIONS FROM THE PRINCIPLE OF OPEN JUSTICE**

3. Rule 39.2 of the *Civil Procedure Rules 1998* provides, so far as is relevant:
  - “(1) The general rule is that a hearing is to be in public. A hearing may not be held in private ... unless and to the extent that the court decides that it must be held in private, applying the provisions of paragraph (3).
  - (2) In deciding whether to hold a hearing in private, the court must consider any duty to protect or have regard to a right to freedom of expression which may be affected ...
  - (3) A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in subparagraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice–
    - (a) publicity would defeat the object of the hearing; ... or
    - (g) the court for any other reason considers this to be necessary to secure the proper administration of justice.
  - (4) The court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that party or witness.”

ANONYMITY

4. In my judgment, I am required by r.39.2(4) to make an anonymity order in this case:
- 4.1 First, there is compelling evidence before me that AAA is the victim of blackmail and that the perpetrators threaten and intend to make further demands with menaces against the other companies. Refusing anonymity would be to deny the companies a potential judicial remedy for such wrong: *LJY v. Persons Unknown* [2017] EWHC 3230 (QB); [2018] E.M.L.R. 19.
- 4.2 Secondly, disclosure of the identity of the claimant companies would defeat the very purpose of this application in that it would put in the public domain the potentially defamatory allegations of fraudulent conduct that the perpetrators threaten to publish.
- 4.3 Thirdly, anonymity has the advantage that the court can then explain rather more of the circumstances of this case in a public judgment: *H v. News Group Newspapers Ltd* [2011] EWCA Civ 42, [2011] 1 W.L.R. 1645.

SITTING IN PRIVATE

5. Further, I am satisfied that I am required to sit in private pursuant to rr.39.2(3)(a) and (g):
- 5.1 Publicity would, as I have explained above, have defeated the object of the hearing.
- 5.2 Further, the allegations of blackmail in this case warrant a private hearing at the without notice stage in order to secure the proper administration of justice.

**SERVICE**

6. The general rule is of course that applications should be made on proper notice: r.23.7(3). The rules do, however, allow parties to make applications without notice where there are “good reasons” for not giving notice: r.25.3(1). There is a further consideration in any case, such as this, where the relief sought might affect the exercise of the right to freedom of expression pursuant to article 10 of the *European Convention on Human Rights*. Section 12(2) of the *Human Rights Act 1998* provides that in such a case:
- “If the person against whom the application for relief is made (‘the respondent’) is neither present nor represented, no such relief is to be granted unless the court is satisfied—
- (a) that the applicant has taken all practicable steps to notify the respondent; or
- (b) that there are compelling reasons why the respondent should not be notified.”
7. Warby J, as he then was, observed in *Birmingham City Council v. Asfar* [2019] EWHC 1560 (QB) that the law is “particularly strict” when it comes to applications for relief which, if granted, would interfere with the article 10 right to freedom of expression. As he identified, s.12(2) is a jurisdictional threshold so that, unless the requirements of the subsection are satisfied, the court has no power to grant an injunction.
8. Joseph Howard, who appears for the companies, argues that there are compelling reasons why the alleged blackmailers should not be notified of this hearing in that the very purpose

of the application is to prevent their carrying out their threat to publish further allegations of fraudulent and other disreputable conduct.

9. On 1 August 2011, the then Master of the Rolls issued the *Practice Guidance: Interim Non-Disclosure Orders* reported at [2012] 1 W.L.R. 1003. Lord Neuberger MR dealt with the operation of s.12(2)(b) of the 1998 Act at paras 21-22:

“21. Failure to provide advance notice can only be justified, on clear and cogent evidence, by compelling reasons. Examples which may amount to compelling reasons, depending on the facts of the case, are: that there is a real prospect that were a respondent or non-party to be notified they would take steps to defeat the order’s purpose (*RST v. UVW* [2010] E.M.L.R. 355, paras 7, 13), for instance, where there is convincing evidence that the respondent is seeking to blackmail the applicant: *G v. A* [2009] EWCA Civ 1574 at [3]; *T v. D* [2010] EWHC 2335 at [7].

22. Where a respondent, or non-party, is a media organisation only rarely will there be compelling reasons why advance notification is or was not possible on grounds of either urgency or secrecy. It will only be in truly exceptional circumstances that failure to give a media organisation advance notice will be justifiable on the ground that it would defeat the purpose of an interim non-disclosure order. Different considerations may however arise where a respondent or non-party is an internet-based organisation, tweeter or blogger, or where, for instance, there are allegations of blackmail.”

10. I am satisfied that there are compelling reasons why the alleged blackmailers in this case should not be notified of this application. On the face of the evidence before me, threats have been made to publish allegations of fraud in the event that payment is not made. If notice were given, there is a real risk that such threat might be carried out in an attempt to deprive this application of any practical utility.

## **THE EVIDENCE**

11. The principal evidence before me is contained in Mr X’s witness statement. It is important that I should make plain from the outset that because I heard this application without notice to the Defendants, this is necessarily a one-sided account of events. Nevertheless, it is supported by a number of documentary exhibits and by a certified recording of a conversation with one of the alleged blackmailers.

12. On 21 July 2021, AAA discovered the existence of a website [www.\[AAA\]investigator.com](http://www.[AAA]investigator.com). The site published a statement under the title “EEE/AAA – A Scam ...” It then named each of the claimant companies and continued:

“All of these organisations appear to be the same as [AAA]. They are shell companies designed to defraud investors. They purport to have amazing ideas, high-profile backers, strong tems (sic), intellectual property, ‘contract’ etc. Yet we find no supporting evidence of any of it. At all. The common goals of these types of scams is (sic) to get initial investment (done), then report to the shareholders the positive results and direction of the organisation. They then aim to seek more funding further down

the line at a ‘special price.’ Rinse and repeat again. Many shareholders are investors in multiple companies listed above unfortunately. Take this opinion, do your own research also, get in touch if you wish to provide more details.”

13. The site then offered an email address [\[AAA\]scam@pm.me](mailto:[AAA]scam@pm.me) and continued:

“If you are an investor in [AAA], you no doubt will have been receiving the company updates and been upbeat and excited, it sounds too good to be true right? Well in my opinion I believe it is ... I hope this catches your attention before you take the ‘incredible’ opportunity to further subscribe to more shares in the latest funding round at a significant discount.

If you are involved in some other [EEE] affiliated seed funding opportunities, then I hope I encourage you to further investigate your shareholding and most certainly avoid doing anything further for now. [EEE] might also be victims in this, or could be complicit. I will keep my research private for now as it is not yet complete.

I believe that [AAA] is an advanced fraud, designed to get you to part with your money initially then get you to part with a lot more further down the line (now ...). Re-read all your company updates and you will realise there is a lot of positives, some small negatives (designed to give you the impression of honesty/ethics and balance), importantly however there is zero substance ... none. There is however lots of stock photos in a poorly put together .pdf, but yet no images of any of their products, people, manufacturing, operations space etc. No detailed accounts, no new team members overviews, no actual real method of contacting them ...”

14. The site then asserted that the author was an early investor; dismissed AAA’s CEO as unknown in his field; asserted that the alleged investor team from the “Investor Deck” does not exist; claimed that you cannot contact [AAA]; suggested that the accountants are a one-man band and that last year’s accounts are overdue; and criticised what it labelled a “myriad of unsubstantiated claims to shareholders.” The author later added that he/she is an investor and had been “fooled.” Interestingly the site continued:

“Could I get my money back? Let’s see ... I have a few methods in the pipeline that will help with that.”

15. The author claimed to be a “hacking hobbyist” who had started the process of going “much deeper into the shady world of those affiliated with [AAA] and some other [EEE] associated investments.” It was, he or she claimed, “not a pretty place.” A further update posted on 23 July 2021 included the following statement:

“If you are a shareholder in other [EEE] investments such as [BBB], [EEE] itself, [DDD] etc. then there will be further investigation information being shared in the coming days. Safe to say that at the moment, it does not look good. Each one will have their sponsored website also ...”

16. Further investigation revealed that the [www.\[AAA\]investigator.com](http://www.[AAA]investigator.com) site was a paid Google advertisement, causing it to be displayed prominently when searching online for AAA. In addition, the company discovered a Twitter account using the handle [@\[AAA\]detective](https://twitter.com/[AAA]detective) in

which the allegation of fraud was again repeated. Tweets by someone calling him or herself Ben repeated such allegations.

17. On 22 July 2021, the investigator was able to make contact with the person or persons behind the [www.\[AAA\]investigator.com](http://www.[AAA]investigator.com) website by using the email address given on the site. They declined to identify themselves save for signing off emails “Bryan” while giving the name “Ben” in the display name for the email account. Ben – as I shall call the person for convenience – again claimed to be an investor and, after avoiding questions as to his identity, he suggested that they might have a “more constructive conversation.” Ben then set up a secure web-based call with Mr X on 23 July. When the two men spoke, Ben demanded that 1.6 bitcoin be paid into his crypto currency wallet by 26 July. Failing payment, Ben said that he would let the Serious Fraud Office have “what he’s got”, which he said was “a lot.” If, however, the payment was made then Ben said that he would remove and delete the website, Twitter and LinkedIn accounts and Google reviews. The call was partially recorded and a certified transcript is before the court.
18. Shortly after the call, Ben emailed Mr X repeating his demand for 1.6 bitcoin, then worth £37,496. Ben said this amount would “cover 3 investors.” It was, he insisted, “returning the fraudulent funds from [AAA] investments. Nothing more.” He gave the details of his crypto currency wallet and repeated that he would take down the website on payment and desist from further investigation into the other companies. He added that there would be no negotiation on the amount.
19. On Saturday 24 July 2021, Ben emailed to increase his demand to 2.2 bitcoin, then worth £54,192.38. He said that the amount would increase the next day and that that would be the “final day” for payment. Failing payment, Ben said that the information would all be sent to the Serious Fraud Office on Monday 26 July.
20. On 26 July 2021, AAA made a modest test payment in bitcoin equivalent to US\$5.56. Ben subsequently confirmed receipt while also expressing his irritation that his demands had not been met. On 27 July 2021, AAA reported these matters to the Metropolitan Police.
21. Finally on 29 July 2021, AAA discovered that someone calling himself “George” had been contacting shareholders to discuss their investments in the company. He said that he was working with someone else.

## **DECISION**

### **(1) THE PROPER APPROACH TO THIS APPLICATION**

22. This is an application for an interim injunction. Accordingly, the court is required to apply the well-known principles in *American Cyanamid v. Ethicon* [1975] A.C. 396. Any injunction restraining publication inevitably affects the respondents’ exercise of their article 10 rights to freedom of expression. Such cases require an “intense focus” on the comparative importance of the competing rights. Further, it is not sufficient in these cases for the

applicant merely to show that there is a serious issue to be tried. Section 12(3) of the *Human Rights Act 1998* provides:

“No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.”

23. In *Cream Holdings Ltd v. Banerjee* [2004] UKHL 44, [2005] 1 A.C. 253, Lord Nicholls of Birkenhead cautioned against reading s.12(3) so strictly that it precludes the court from granting short-term interim relief until the court is able to give the matter fuller consideration.

**(2) PUBLICATION SHOULD NOT BE ALLOWED**

24. The companies sue the Defendants in this case for unlawful means conspiracy. I am satisfied upon the papers before me that AAA is likely to establish such tort at trial and that publication should not be allowed.

24.1 Agreement or combination: In argument I raised with Mr Howard whether he put AAA’s case on any other basis since it was possible that there is in fact only one person behind the website, the Twitter and LinkedIn accounts and the demands for money. I am, however, satisfied on the evidence that AAA is likely at trial to establish a conspiracy between two or more persons:

- a) First, on Ben’s own statement, he claimed to represent himself and two other shareholders.
- b) Secondly, there is evidence of a second conspirator, George, acting in concert with Ben.

24.2 An intention to injure: There is clear evidence that the conspirators intend to “take down” AAA and to damage its reputation.

25. Unlawful means:

25.1 Blackmail is an indictable offence contrary to s.21(1) of the *Theft Act 1968*, which provides:

“A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; ... a demand with menaces is unwarranted unless the person making it does so in the belief –

- (a) that he has reasonable grounds for making the demand; and
- (b) that the use of the menaces is a proper means of reinforcing the demand.”

25.2 The presence of blackmail will be an important matter in determining applications for injunctive relief. In *LJY*, Warby J said, at [29]:

“Generally, the court has taken the view that blackmail represents a misuse of free speech rights. Such conduct will considerably reduce the weight attached to free speech, and correspondingly increase the weight of the arguments in favour of restraint. The court recognises the need to ensure that it does not encourage or help blackmailers, or deter victims of blackmail from seeking justice before the court. All these points are well-recognised ... It can properly be said that

the grant of a privacy injunction to block a blackmail serves the additional legitimate aim of preventing crime.”

- 25.3 In this case, there is clear evidence that the conspirators sought to extort money by threatening to expose alleged fraudulent activity. Even if they are aggrieved shareholders or genuinely believe that AAA is a fraudulent company, it is likely that AAA will establish at trial that:
- a) the escalating demands for bitcoin were unwarranted;
  - b) the conspirators cannot genuinely have believed that they had reasonable grounds for making such demands;
  - c) such demands were reinforced by the menace of a threat to expose alleged fraud.; and
  - d) the conspirators cannot genuinely have believed that such threat was a proper means of reinforcing their demands.
- 25.4 Indeed, if the conspirators genuinely believed that their demands were reasonable or that their threats were a proper means of reinforcing their demands then they would no doubt not have hidden behind aliases and the cloak of secure emails and the Webex call.
- 25.5 Loss: I am satisfied on the evidence before me that AAA has already suffered loss of at least £51,000. Unless restrained by the court, the company is likely to suffer further losses either to its reputation and business as a result of the further publication of allegations of fraud or its reluctant agreement to succumb to blackmail.
26. Although no allegations of fraud have yet been published against BBB, CCC, DDD or EEE, there is a strong probability that unless restrained by the court the conspirators will follow the same pattern of conduct in respect of these companies and use the threat of such publication as a means to extort money.
27. In so concluding, I should make clear that I intend to express no view as to the propriety of these companies’ businesses. Investors might prove to have proper grounds for complaint, but those are matters to be addressed through industry regulators and – if fraud is alleged - the police or Serious Fraud Office. Such grievances can never justify blackmail.

### (3) THE ADEQUACY OF DAMAGES

28. I am satisfied that the companies would not be adequately compensated in damages. On the other hand, it is not obvious that the defendants will suffer any real loss by being limited to lawful means of complaint.

### **OUTCOME**

29. Accordingly, I grant interim relief pending fuller consideration of this case at an inter partes hearing. On indicating that I would grant relief, I heard counsel as to the precise terms of the order.