



Neutral Citation Number: [2024] EWHC 230 (KB)

Case No: KB-2024-000256

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/02/2024

Before :

THE HONOURABLE MRS JUSTICE STEYN DBE

Between :

TIMOTHY JOHN HULL PATTINSON

Claimant

- and -

ROBERT IAN WINSOR

Defendant

Harry Samuels (instructed by **Paris Smith LLP**) for the **Claimant**

The **Defendant** did not appear and was not represented

Hearing date: 2 February 2024

Approved Judgment

This judgment was handed down remotely at 12.00pm on 6 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE STEYN DBE

MRS JUSTICE STEYN :

1. This judgment addresses the Claimant’s application for an interim injunction, sought at a without notice hearing. I granted the interim injunction sought and indicated that, as the Defendant was not present, I would put my reasons in writing.
2. The Claimant is married to the Defendant’s sister, and so the Defendant is his brother-in-law. On 1 February 2024, the Claimant issued a claim under s.3 of the Protection from Harassment Act 1997 (‘the 1997 Act’), seeking a final injunction to restrain the Defendant from pursuing any conduct which amounts to harassment of him. On the same day, the Claimant made an application for an interim injunction, seeking an urgent without notice hearing. The application is supported by a witness statement made by the Claimant, dated 31 January 2024. The interim injunction hearing was listed before me the next day, 2 February.

Without notice hearing

3. The Claimant gave the Defendant informal notice, at 10am on 2 February, of the hearing at 12 noon. Unsurprisingly, in those circumstances, the Defendant did not attend the hearing or provide any response to the application. As the Claimant recognised, a preliminary question for the court was whether to grant the application for this matter to be determined without a hearing.
4. CPR r. 25.3 states that “*the court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.*” Any without notice application requires the applicant to give full and frank disclosure of all matters of fact and law which are material to the application, and I am grateful to Mr Samuels for the assistance he provided in considering matters that might have been raised by, or on behalf of, the Defendant if he had been present.
5. The interim injunction sought would engage the Defendant’s right to freedom of expression under article 10 of the European Convention on Human Rights (‘ECHR’). Consequently, s.12 of the Human Rights Act 1998 (‘the HRA’) applies. Section 12 provides, as far as relevant, as follows:

“(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) 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.

(3) 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.

(4) The court must have particular regard to the importance of the Convention right to freedom of expression ...”

6. I concluded that the test in s.12(2) of the HRA was met. I was satisfied that there were compelling reasons for notice not having been given to the Defendant. On the evidence before me - and I emphasise that at this stage I have not heard from the Defendant - he has been engaged in a campaign of harassment by publication of serious but baseless allegations against the Claimant, to a wide array of recipients. Having regard to his past behaviour, including in particular following the Claimant’s letter before claim, I concluded that there is a strong likelihood that if the Claimant had given proper notice of his application, the Defendant would have taken steps to defeat the order’s purpose, by repeating the allegations to an even wider audience. I address the evidence in more detail below.

The Background

7. The background to the present dispute consists of two courses of litigation involving the Defendant:
- i) The Will proceedings in 2023; and
 - ii) The Defendant’s litigation against a third party between 2010 and 2012, resulting in his bankruptcy and civil restraint orders being entered against him.
8. The Defendant’s mother died on 28 December 2022 (‘the Deceased’). She left a will dated 7 April 2022 (‘the Will’) which appointed her daughter (‘Juliet’; the Claimant’s wife and the Defendant’s sister) and the Claimant as executors (‘the Executors’). The Claimant is not a beneficiary of the Will. In summary, it provides that: Juliet should receive certain chattels, and be able to select other chattels; the Defendant should receive the remaining chattels; Juliet should receive a gift of £100,000; the Defendant should receive a life interest in the property of the Deceased; and the residuary estate to be split equally between Juliet and the Defendant.
9. The Defendant lodged a caveat and challenged the validity of the Will. On 5 May 2023, the Executors began proceedings in the Chancery Division of the High Court, seeking a declaration as to the Will’s validity and a grant of probate in solemn form (claim PT-2023-000360). The Defendant defended the probate claim, alleging that the Will had been procured through fraudulent calumny and undue influence on the part of the Executors. He also filed an application to remove the Claimant as an executor, as well as various applications to adjourn the trial.
10. The Will was upheld as valid on 6 November 2023 by Master Pester in *Pattinson v Winsor* [2023] EWHC 3169 (Ch). In his judgment, Master Pester dismissed all allegations by the Defendant that the Will had been procured through any fraudulent calumny or undue influence, as well as the application to remove the Claimant as an

executor. Master Pester ordered that the Defendant pay the Executors' costs on the indemnity basis, to reflect the Defendant's unreasonable conduct. Master Pester also made a limited civil restraint order against the Defendant in circumstances where the Defendant had made two applications in the Will proceedings which had been certified as totally without merit.

11. The Defendant did not attend the trial on 6 November 2023, although Master Pester had permitted him to attend remotely, to accommodate his health issues. Master Pester proceeded in his absence in circumstances where the Defendant had applied to vacate the trial on medical grounds, without providing independent medical evidence. Summarising his findings at [39], Master Pester held:

“In the event, this is a will that is rational on its face. One can fully understand why the Deceased made it. There is no challenge on the grounds of capacity or lack of formality. The defendant raised two challenges, being fraudulent calumny and undue influence. In my view, neither of those are made out. I reach that conclusion not only on the basis that Mr Winsor does not attend today but also having independently reviewed the totality of the evidence that is before me and having read everything Mr Winsor has chosen to put in.”

12. The Defendant has filed an appeal against the dismissal of the executor removal application.
13. In the course of the Will proceedings the Defendant sought to re-litigate matters which had led to his bankruptcy in 2013. The Claimant has made clear the basis and limits of his knowledge about that matter. In short, in 2004, the Deceased funded the purchase of a flat in Pimlico for the Defendant. The Defendant lived in London for many years with his partner, Veronica Vale. Sadly, she died in 2010. The died intestate and the Defendant began proceedings under the Inheritance (Provision for Family and Dependents) Act 1975. Those proceedings began in 2010 and were dismissed with costs in 2012.
14. In 2013, the Defendant was made bankrupt for failing to pay the costs order in relation to the 1975 Act claim. The Defendant pursued appeals to the High Court and the Court of Appeal. An extended civil restraint order was imposed upon the Defendant by Peter Smith J on 23 October 2013, continued by Henderson J on 27 January 2014, and permission to appeal in respect of that continuation was refused by Arden LJ on 22 January 2015.
15. After the Defendant's bankruptcy, his mother made representations to the trustee in bankruptcy, and successfully recovered £130,000 from the Defendant's bankruptcy estate in respect of the Pimlico flat. That was a matter between the Deceased and the trustee in bankruptcy. The Claimant was not involved in the process. However, it may be presumed that the Deceased was able to recover that sum from the bankruptcy estate on the basis that she was a creditor, having loaned money to the Defendant for the purpose of acquiring the Pimlico flat.

The Defendant's communications

16. Central to this application for an interim injunction is the barrage of correspondence that the Defendant has sent to the Claimant, his wife, and a wide array of third parties, particularly the Claimant's leadership judges and colleagues. In this correspondence, the Defendant fixates on his belief that there was fraudulent conduct in respect of the Defendant's bankruptcy. The Defendant appears to claim that the transfer of £130,000 from his estate in bankruptcy to his mother was fraudulent, somehow involving the Claimant – despite that transaction having been a matter between the trustee in bankruptcy and the deceased, in which the Claimant had no involvement – and that any subsequent dealings with that money constituted dealings with the proceeds of crime. The Defendant also states that he views the Will as being an instrument of fraud designed by the Claimant to 'steal' and then 'launder' the £130,000.
17. The Defendant has communicated his allegations to a sizable cast of people. Most pertinently, this includes:
 - i) District Judge Goldspring, the Chief Magistrate of England and Wales;
 - ii) District Judge Doyle, the Honorary Secretary of the Association of His Majesty's District Judges;
 - iii) Claire Manning, the Chief Magistrate's legal adviser and researcher;
 - iv) Nick Goodwin, the Chief Executive of His Majesty's Courts and Tribunals Service ('HMCTS');
 - v) An email address which serves the Chief Magistrate's office (the "CMO") and, the Claimant understands, emails to this inbox are received by the Chief Magistrate's personal assistant, who has responsibility for the deployment of Deputy District Judges in the Magistrates' Courts;
 - vi) Jesse Norman MP, the Member of Parliament for Hereford and South Herefordshire, the Defendant's constituency;
 - vii) Shabana Mahmood MP, the Shadow Justice Secretary and Member of Parliament for Birmingham Ladywood; and
 - viii) The Attorney-General's Office.
18. It is apparent from the terms of his emails that the Defendant is deliberately seeking to address, amongst others, the Claimant's 'line managers' (or leadership judges) and colleagues.
19. Counsel for the Claimant, Mr Samuels, has drawn my attention to some of the emails from the Defendant (including on 11 August 2023), particularly the most recent ones (sent on 11, 14, 18, 19, 22 and 24 January 2024). The evidence is that this is part of a pattern of behaviour extending over many months, at least.
20. It is unnecessary, in this judgment, to make the terms of the Defendant's emails more widely public than he has done. As the Claimant says, the Defendant accuses him of fraud, theft, forgery, money laundering and abusing his position as a judge. These are very serious allegations for which there is no supporting evidence. The Claimant says:

“I do not know whether the Defendant actually believes the things that he has written about me or not but I cannot think that any reasonable person would.”

21. The Claimant has given evidence as to the distress and professional embarrassment that the Defendant’s emails have caused him.

The application for an interim injunction

22. The standard test for seeking an interim injunction is the classic three-part test in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (HL). The three questions to be asked are: (a) Is there a serious question to be tried? (b) Would damages be an adequate remedy for a party injured by the court’s grant of, or its failure to grant, an injunction? (c) If not, where does the balance of convenience lie?

23. The threshold is higher where a court is being asked to impose a restraint on publication prior to trial: s.12(3) of the HRA. That is the position here. The interim injunction sought would restrain the Defendant from send further emails, or otherwise publishing, the allegations that he has repeatedly made against the Claimant. It follows that I need to be satisfied not merely that there is a serious question to be tried, but that the Claimant is likely to establish, at trial, that publication should not be allowed: see *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253 (HL).

24. I have considered whether this is a matter in which the ‘nub’ of the claim is protection of reputation, such that the court should apply the stricter rules that would apply if this claim had been brought as a defamation claim (in particular, the *Bonnard v Perryman* rule). However, it is clear, in my view, that in bringing this claim for harassment, the Claimant has not sought to circumvent the stricter rules applicable to defamation. While the Claimant has frankly acknowledged the concerns he has for his reputation, it is plain that the true nub of the claim is his concern about the campaign of harassment to which he has referred. That includes sending emails to himself and his wife, and to many others who are unlikely to have believed what they read, with the consequence his reputation is unlikely to have been damaged in their eyes.

25. Section 1(1) of the 1997 Act provides:

“A person must not pursue a course of conduct—

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.”

26. References to harassing a person include alarming the person or causing the person distress: s.7(2) of the 1997 Act. The term harassment carries its ordinary English meaning: *Hayes v Willoughby* [2013] 1 WLR 935, [11]. The conduct in question must be sufficiently serious, crossing “*the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2*”: *Hayes*, [12],

citing *Majrowski v Guy's and St Thomas's NHS Trust* [2007] 1 AC 224, Lord Nicholls, [30].

27. On the evidence before me, I am satisfied that the Defendant has repeatedly bombarded those he perceives as the Claimant's 'line managers' or 'employer', and his peers, as well as the Claimant and his wife, with baseless allegations of serious misconduct. This has humiliated, upset and distressed the Claimant. As far as the allegations concerning the Bankruptcy proceedings are concerned, it is manifest that the decision by the trustee in bankruptcy to return £130,000 to the Deceased is not a matter for which he can sensibly be regarded as responsible or in any way legally liable. As far as the Will proceedings are concerned, the court has determined that the Defendant's allegations are unfounded. In the context of these proceedings, the validity of the Will is *res judicata*.
28. It appears that the Defendant may believe that he is acting as a whistle blower, although he is not an employee to whom the provisions of the Public Interest Disclosure Act apply. And he may believe that his course of conduct "*was pursued for the purpose of preventing or detecting crime*": s.1(3)(a) of the 1997 Act. If he could substantiate such a belief, that would be a defence to the claim. But the defence is not entirely subjective. In *Hayes* Lord Sumption observed at [15]:

"Before an alleged harasser can be said to have had the purpose of preventing or detecting crime, he must have sufficiently applied his mind to the matter. He must have thought rationally about the material suggesting the possibility of criminality and formed the view that the conduct said to constitute harassment was appropriate for the purpose of preventing or detecting it."
29. I am satisfied that it is likely the Claimant will succeed at trial in showing that the barrage of emails sent by the Defendant to the Claimant, copying in a large cast of third parties, amounts to harassment of the Claimant and that the Defendant ought to have known that it amounts to harassment. The Claimant is also likely to succeed at trial in showing that the emails are irrational, and that the Defendant cannot benefit from the defence in s.1(3)(a) of the 1997 Act.
30. I have no hesitation in concluding that an award of damages to the Claimant would not be an adequate remedy. If no injunction is granted, the Defendant's continuing, and indeed escalating, conduct is likely to cause him further distress, humiliation and embarrassment, and would have the potential to cause him reputational damage, which would be difficult matters to quantify or remedy. In any event, the Defendant is impecunious and would not be able to satisfy an award of damages.
31. By contrast, I consider that the interference with the Defendant's right to spread his allegations by email (or otherwise) would be capable of being compensated in damages. This is not a situation akin to publication of a news item by a newspaper in which there is a particular urgency and time-sensitivity about when the matter is published. If, contrary to the view I have taken on this application, the court were ultimately to conclude that the Defendant's freedom of speech should not be restrained, then he will be able to resume making allegations such as those which he has already made frequently to many people over many months.

32. I have no doubt that there is a greater risk of injustice and harm if I were to refuse the interim injunction sought, than if I were to grant it. The balance of convenience therefore weighs substantially in the Claimant's favour.
33. Accordingly, I granted an interim injunction, with a return date set for two weeks' time, at which point the Defendant will have a full opportunity to challenge the continuation of the order pending trial.