Neutral Citation Number: **[2024] EWHC 2433 (KB)**

Case No: KB-2024-000835

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/09/2024

Before:

MR JUSTICE JAY

- -

Between:

(1) KAZI ANIS AHMED
(2) KAZI INAM AHMED
(3) KAZI NABIL AHMED **Claimants**

- and –

AHSAN AKBAR **Defendant**

- -
- -

Jonathan Cohen KC (instructed by **Privatus Law**) for the **Claimants**
The Defendant in Person

Hearing date: 22 July 2024

- -

Approved Judgment
Redacted for Publication

This judgment was handed down remotely at 10.30am on 25 September 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE JAY

MR JUSTICE JAY:

THE BACKGROUND TO THIS APPLICATION

1. This application for injunctive relief comes back before me in somewhat unusual circumstances.

2. There was a contested hearing before me on Friday 12 April 2024. The Claimants were represented by Mr Neil Hamilton instructed by Privatus Law. The Defendant was represented by Ms Chloe Strong instructed by Simons Muirhead Burton LLP ("SMB"). After hearing submissions from counsel, I delivered an extempore judgment, that I have since corrected for typographical and similar errors but have not released for publication, setting out my reasons for discharging the injunction granted without notice by Linden J.

3. Shortly after the hearing, Mr Anthony Perlmutter, the Defendant's then solicitor, drew a matter to my attention which on any view might cause me to hesitate and rethink. I will be setting out the detail of what happened later in this judgment, but at this juncture it is sufficient to state that I decided not to draw up the Order which I had been told had been prepared in draft by Ms Strong. To cut a very long story short, the parties are now back before me on what continues to be the Claimants' on notice application for injunctive relief.

4. Before I address the post-hearing events, I propose to set out the background to this application. I can do so by repeating with some adaptations the relevant sections of my extempore judgment.

ESSENTIAL FACTUAL BACKGROUND TO THE CLAIMS FOR INJUNCTIVE RELIEF – THE EVIDENCE AS AT 12 APRIL 2024

5. On 22 March this year, Linden J at a without notice hearing granted injunctive relief in favour of the three Claimants, Mr Kazi Anis Ahmed, Mr Kazi Inam Ahmed and Mr Kazi Nabil Ahmed, against the Defendant, Mr Ahsan Akbar. The Claimants are all brothers and are Bangladeshi nationals. The Defendant, on the other hand, although of Bangladeshi origin, is a British citizen.

6. The Claimants are owners of the Gemcon group of companies which is based in Dhaka, Bangladesh, although some or all of them live in other jurisdictions. The Gemcon group, I understand, is extremely successful.

7. The Defendant and the first Claimant became friends in 2011, and for a lengthy period of time were extremely close. In 2014, a business relationship developed between them [XX] and at an earlier point in time, I believe in 2008, was active in the [XX].

8. The way that [XX] is sold is, on my understanding, two-fold. First of all, through the retail sales [XX]; and, secondly, and this was the idea which started in 2014, at least in the UK, through a shop [XX].

9. [XX].

10. The Defendant's evidence is that the reason for this is that under Bangladeshi anti-money laundering provisions regulatory approval would be required for an investment of this sort. More recently, the Defendant has suggested that investing outside Bangladesh is "illegal". I am not required to reach any definitive conclusion on that question, and could not fairly do so on the material available.

11. The business appears to have survived in its early days but problems arose during the pandemic. The precise point in time at which it became insolvent is not agreed between the parties, but the company was wound up in either 2022 or 2023. It was following the liquidation of the company that a series of important financial disputes between the parties arose which I will need to touch on.

12. [XX].

13. [XX].

14. There was an argument between the first Claimant and the Defendant on 27 December 2022 on the rooftop of a hotel in Dhaka. My attention has been drawn to an email which relates to it, but more importantly the first email which I need to pay particular attention to is one sent by the Defendant to the first Claimant on 19 January 2023. This email refers to the argument that they had had on 27 December. It refers to what the author called "bullshit words". He voices his concern about what the first Claimant said or may have said, comparing the author's sister [XX] and concluded with the words "it is my free will to say goodbye, farewell", and signed off by the defendant. The context of that email is of course clear - that it was the end of a very close friendship between the relevant parties and therefore a degree of emotion is evident.

15. The financial disputes between the parties started shortly thereafter with the Defendant claiming that he was owed money by the Claimants and the Claimants asserting in due course, but it is fair to say at some later point, that the Defendant was responsible for financial defalcations. It is simply not possible to reach any conclusion about those allegations and counter-allegations, and for present purposes I regard them as neutral.

16. It was in the context, however, of the burgeoning financial dispute that there was a later exchange of emails to which particular attention has been drawn during the course of the hearing. At the first hearing, I was invited by Ms Strong to consider the email chain as a whole in order to understand the context of the email which gives rise to particular concern from the first Claimant's perspective. I undertook that exercise, both in advance of the April hearing and with the assistance of counsel.

17. A gentleman called Mr Firas Allan acting in the interests of the first Claimant was saying that the financial claims advanced by the Defendant were baseless and unsubstantiated. He said that consideration would only be given to claims which were backed by paperwork. It is within that context that, wisely or not, the Defendant sent his email to the first Claimant on 22 May of last year. The purpose of the email was to address the points made *seriatim* by Mr Firas.

18. Under the subheading "paperwork", we see this:

"[XX]"

19. By way of context, there was to be a general election, I understand, in Bangladesh in January 2024 and it was the third Claimant, the sitting member of parliament, who was up for re-election.

20. It is certainly clear that this email did contain a threat of sorts, but to what exactly the threat related I will need to consider and analyse in due course. I think, on reflection by him, the Defendant would have to accept that although this email was written when he was in an exasperated state of mind it should not have been termed in this way.

21. There is another set of emails on which reliance is placed by the Claimants and these date from July of last year. On 3 July, the Defendant sent an email to himself, but blind copied a number of friends. Exactly how many people were included in the copy list is unknown, and has not been volunteered by the Defendant. The email referred to what was described as an unsavoury matter that required to be addressed urgently and the email says that the author, the Defendant, had fallen out with the first Claimant [XX]. As the email continues, "I have stayed silent all this time, but as embarrassing as it is, it is no longer possible to maintain the silence as he is spreading factually incorrect information about me", and then there is reference to the financial disputes to which I have already alluded:

> "After all of this, it's entirely up to you what you decide, and I'm writing to my friends to share the full picture.
>
> Of course, I know that you won't entertain this drivel about me. Perhaps a huge favour you could do is urge them to clear my dues if they reach out to you."

22. [XX]. We have several copies of the same email in the papers.

23. And then, on 18 March and 19 March this year, the friends in question started forwarding copies of the email to the first Claimant. It is interesting to note the similarity, at least of the substance, and on occasion the language used, by some of these friends. There is a reference to certain sensitive personal information. And then those emails were further forwarded on to Mr Sampson, who is the solicitor for the first Claimant.

24. Putting a marker down at this stage, the timing of the forwarding of these emails is to say the least interesting. The emails were not forwarded, at least, there is no evidence that they were, in July 2023 when they were sent. Despite the threat, whatever it was, made in the email of 22 May, nothing thereafter happened, on the Defendant's side at least. He did not execute his threat. There was continuing correspondence and solicitors became involved.

25. It is unnecessary to dwell on the progress or lack of it of the negotiations in relation to the financial dispute.

26. But then there was another relevant event in this chronology and we are focussing now on 18 March of this year. The first Claimant received an email notifying him of a shipment made apparently by SMB, via FedEx, with a tracking number, to him in

Dhaka, Bangladesh. One of the shipments, we know from further details provided, and this is the shipment bearing the 12-digit number ending 0850, was a half a kilogram letter sent apparently to the first Claimant. At the April hearing, I did not read the email notification - one aspect of Miss Strong's submissions - as indicating that the sender was the first Claimant. I thought that his name has just been put in the wrong place.

27. Mr Cohen drew my attention to one of the tracking updates. The address of the recipient was given as "CRI". I am told that this is a political think-tank and the first Claimant is a member of the editorial board of its flagship publication, "Whiteboard". Although this was not before me on 12 April, Mr Cohen also pointed out that the parcel shipping order of Mail Boxes Etc. (a company who uses FedEx) gave the sender's email address as gemconfiles@gmail.com.

28. Now, the Claimants were apparently very concerned by this turn of events because on the face of it the Defendant's solicitors were sending something unsolicited to the first Claimant. There is a similar email which relates to the third Claimant: in this instance, the parcel in question was sent to him at the address of the Houses of Parliament in Bangladesh. On 18 March Mr Sampson wrote to Mr Perlmutter stating that according to the tracking information the sender was SMB and the recipient was Radwan Mijib Siddiq, the nephew of the Prime Minister of Bangladesh. And the argument which then developed in the mind of the Claimants' legal team was that this was, in effect, a shot across the bows or warning: that unless the financial negotiations followed a certain course, namely a course more favourable from the Defendant's point of view, then earlier threats would be implemented or that there was something in the envelope itself which constituted evidence of the execution of a threat.

29. It was on the back of this information that the without notice application was made to Linden J. The scope of the application was rather wide. It did not just relate to a claim for misuse of private information. There was also an unparticularised claim for breach of confidence, that information was going to be divulged relating to the Claimants' business interests.

30. The application was heard by Linden J at about noon on 22 March. It was backed by a witness statement from Mr Sampson and the statement, to be fair to him, did not allege that it was the Defendant's solicitors who had sent the package. What was said was, at paragraph 106:

> "The only logical inference that can be drawn by reference to the package being purportedly sent by SMB was that the respondent is the true sender of the parcel as he is SMB's client and it was he who organised and sent the parcel."

31. The first Claimant's witness statement, which was not before Linden J, as it is dated 4 April, stated that:

> "the only logical inference that can be drawn by reference to the package being purportedly sent by SMB is that either it was sent by SMB or that Ahsan is the true sender of the parcel, as he is SMB's client and it was he who organised and sent the parcel. Further inference that can be drawn is that recording the recipient as me is an attempt to cause confusion. It may also be a ploy to

> inform me and my brothers that he has sent such a parcel, possibly containing personal and/or confidential information that he has threatened to reveal to other people and that he has sent it to a high value person in the Bangladeshi political and social landscape."

32. Looking at the position as it was before Linden J, the argument being advanced on behalf of the Claimants is that at the very least this was entirely mysterious. It was suspicious and what is more it was threatening, and the Court should therefore draw the inference that there was a risk that the Defendant might divulge information which was either confidential or amounted to a misuse of private information.

33. The hearing note of what happened before Linden J is far from ideal, but I believe it is fair to draw the conclusion, first of all, that he was not satisfied that the breach of confidence claim was properly particularised; and, secondly, focussing on the mysterious FedEx packages, that the relevant test in section 12(3) of the Human Rights Act 1998 was satisfied when read in conjunction with relevant authority.

34. It is true that authorities were not expressly mentioned, it seems, during the course of the hearing, but a reasonable attempt to summarise them had been made in Mr Hamilton's skeleton argument which was before Linden J; and although no High Court judge has a photographic memory of these cases, the general principles are fairly well established.

35. Unsurprisingly, the judge made a number of ancillary orders in connection with the injunction he imposed, but the injunction was limited to the misuse of private information. It is unnecessary to read out the schedule to the order, but it basically concerned details of [XX], documents which related to it and any private correspondence between the defendant and the first Claimant.

36. Linden J, as I have said, was not satisfied that the other aspects or limb of this claim was well founded.

37. Between the date of the without notice hearing and 12 April, there was a disappointing lack of communication between the parties and, in some respect, a lack of timeous compliance with the order of Linden J. What should have happened is that the parties ought to have cooperated to ensure that this hearing proceeded smoothly. Email addresses of counsel or counsel's clerks should have been exchanged at an early stage. There should have been an early liaison over a joint bundle of authorities. Attempts should have been made to identify the clerk to the High Court judge who was going to hear this, and so forth.

38. I had been allocated this case probably 10 days before the April hearing, but starting looking at it seriously two or three days beforehand. I was working solely on the basis of what appeared on the CE filing system. In line with my usual practice, I asked my clerk to reach out to the legal representatives of the parties who are on the record – at that stage, SMB were not on the CE filing system – but that attempt, I regret to say, was fruitless.

39. At the 12 April hearing Ms Strong raised, as she was entitled to, a number of procedural issues. My preference, however, was to deal with the merits.

40. The conclusion I reached in April this year was as follows:

(1) It was not open to the Claimants to advance the breach of confidence claim, and in any event if failed on the merits, because the section 12(3) threshold had not been met.

(2) The emails in May and July 2023 verged on the unpleasant, but in themselves would not justify the grant of injunctive relief.

(3) The contents of the FedEx parcels related only to the underlying financial claim.

(4) I rejected out-of-hand the notion that the FedEx parcels could have been sent by the Defendant's solicitor.

(5) I was far from satisfied that the Defendant was behind the FedEx parcels. Both he and the Claimants had filed witness statements, backed by a statement of truth, denying any responsibility for the parcels.

41. As for point (5) above and more generally, what I said in my April judgment was as follows:.

> "Mr Hamilton valiantly submitted that his clients would simply have no incentive to do that. The same could really be said, frankly, of the defendant. Either this was a completely stupid, cack-handed, pointless attempt by the defendant to sow fear in the hearts of the claimants or it was a similarly described attempt by the claimants to undermine the defendant and weaken his position in the financial negotiations, which I deduce had largely stalled.
>
> A further complication is the oddity that the 3 July emails to the friends were not forwarded by the friends to the first claimant until 18 or 19 March, and I think is a bizarre feature of this case.
>
> So I am a long way from being satisfied to the relevant standard that the defendant was behind this and that a case which was impossible to advance, say on 15 March, could now be advanced on 22 March in the light of what we now know. More importantly, I am looking at the matter as at today's date in the light of everything I know rather than everything Linden J knew.
>
> But the reality is, in any event, that the threats made in May, possibly July, last year, aside from the fact that they have never come to fruition, did not relate in any way to the private information which is scheduled to the order of Linden J. Now that we know what the contents of the two envelopes apparently are, and this is only on the first claimant's evidence, but I am entitled to have regard to it for these purposes, it is simply not sustainable, in my view, that there is a threat or there has been a threat to divulge private information on the defendant's part.

> The same applies *a fortiori*, I believe, to the wider claim, insofar as it can be advanced, based on breach of confidence."

POST 12 APRIL 2024 EVENTS

42. Before the judgment was finalised and the Order was made, Mr Anthony Perlmutter of SMB served evidence which revealed that what appeared to be the Defendant's signature was on the relevant postal forms for the FedEx packages. His instructions from his client were that he had not signed these documents. He believed that someone must have forged his signature. When copies of the signatures were emailed to him, the Defendant said that, whilst he could see the similarity of the signatures to his own, "this was alarming to him and [he] confirmed once again that he had not signed these himself".

43. I invited submissions from the parties as to the way forward. There followed a flurry of submissions and evidence which I may take quite shortly. At an early stage, Mr Hamilton was replaced by Mr Cohen. The Claimants' solicitor instructed an expert in handwriting, Mr Brand, to give opinion evidence on the issue of whether the signatures on the FedEx documents were the Defendant's. Mr Brand reported that it was highly probable that that they were.

44. On 25 April 2024 the Defendant, having been confronted with this evidence, sought to "make a few observations" on Mr Brand's analysis because his integrity had been called into question. He added this:

> "I have already confirmed in my first witness statement that I did not send the packages that are at issue in these proceedings. I do not know who signed the shipping orders for the packages at Mail Boxes Etc. I did not sign the Orders of which copies were exhibited to Mr Perlmutter's second witness statement."

45. By then, the Claimants had also raised an issue about a website called gemconfiles.com. At paragraph 15 of his second witness statement, the Defendant said that he was not behind this site in any way.

46. Mr Cohen's litigation strategy, perfectly sound in my view, was to apply for *Norwich Pharmacal* relief against FedEx and/or Mail Box Etc. I indicated that I was not happy hearing that application, unless the Defendant consented to that course, through fear of appearing to prejudge the issue. I confess that by that stage I very strongly suspected that the fruits of any *Norwich Pharmacal* application would not be helpful to the Defendant. There was then a radio silence from the Defendant's side.

47. Then, on 28 June 2024 the Defendant filed a third witness statement which admitted that his two previous witness statements had not been truthful, and that he had sent the packages. His explanation for doing so was that he felt that he was facing a brick wall in relation to the financial dispute. He simply wanted to try to reach the people whom he thought were the decision-makers in relation to this dispute, and to circumvent the barrier which he believed had been erected by the second Claimant. He had no intention to embarrass the Claimants. His reason for not acknowledging that he had sent the parcels was to protect his family in Dhaka from potential violence. He was shocked by

the aggression displayed by the Claimants, he pointed out that Bangladesh is a corrupt country, and he feared for his personal safety and the safety of his family.

48. The Defendant states that he never appreciated that the issue of the two parcels would take such a central stage in the context of the injunction application. The Defendant sincerely apologises both to the Court and to the Claimants for misleading them.

49. Finally, the Defendant's explanation for the timing of the acknowledgement of his previous lies was that his sister had received assurances from a senior minister of the Bangladeshi government that steps would be taken to ensure that the Claimants did not harm the Defendant and his family. I may say at once that I cannot accept that explanation. The acknowledgment came at the time it did because the Claimants were about to bring a *Norwich Pharmacal* application in the High Court and the Defendant's lies were about to be revealed. This was no more than damage limitation.

50. The Defendant also relies on a witness statement from his sister 28 June 2024 supporting aspects of his account.

51. Since then, there has been further evidence from both the Claimants and the Defendant which I do not consider I need summarise at this stage.

SHOULD I REHEAR THE CLAIMANTS' APPLICATION FOR INTERIM RELIEF?

52. In my judgment, it is obvious that I should in the interests of justice. The judgment I gave on 12 April was predicated, at least in part, on being agnostic as to who sent the packages. If anything, I was inclining more in favour of the Defendant's case than the Claimants.

53. The decision of the Supreme Court in *AIC Ltd v Federal Airports Authority of Nigeria* [2022] UKSC 16; [2022] 1 WLR 2022 is authority for the proposition that the Court has a wide discretion as to whether to alter its judgment before its Order has been perfected. It is quite plain to me that I must now consider the matter afresh in the light of what is now known.

54. The fact remains that the Defendant's credibility has been largely shot to pieces. He has lied to the Court on at least two separate occasions.

55. That the Defendant has lied is not a conclusive factor in the Claimants' favour. Consideration must still be given to whether the Claimants' claim for injunctive relief has been made out. Mr Cohen does not suggest that I should not examine and analyse the evidence before me with the appropriate degree of care, and it is that course that I propose to follow.

THE CLAIMANTS' RECONSTITUTED CASE

56. At the April hearing I was critical of the state of the Claimants' pleadings. I therefore directed that the Claimants, if so advised, get their paperwork in order as soon as possible. On 21 June 2024 the Claimants filed and served: (1) an Amended Claim Form, (2) Amended Particulars of Claim, and (3) an Amended Application Notice seeking an Order for the continuation of Linden J's without notice injunction.

57. The Amended Claim Form covers the Claimants' right to privacy as well as misuse of the Claimants' confidential information. The Amended Particulars of Claim provide greater detail. In my view, the paperwork is now in order.

GOVERNING LEGAL FRAMEWORK

58. Mr Cohen addressed first of all the privacy claim. He took me to a number of well-known cases, his objective being to demonstrate that the concept of a "reasonable expectation of privacy" is fact-sensitive. It is not in dispute that the details relating to [XX], are almost always within the scope of the doctrine. Mr Cohen's point was that the fact of [XX], because Bangladesh is a highly conservative society and the Defendant's main purpose was or is to blackmail the Claimants.

59. Mr Cohen referred to the following authorities: *ZYC v Bloomberg LP* [2022] UKSC 5; [2022] AC 1158 (at paragraphs 49-52); *Lord Browne of Madingley v Associated Newspapers Ltd* [2007] EWCA Civ 295; [2008] QB 103 (at paragraphs 25, 26, 29 and 31); *Donald v Ntuli* [2010] EWCA Civ 1276; [2011] 1 WLR 294 (at paragraphs 32 and 35); *PJS v News Group Newspapers Ltd* [2016] UKSC 26; [2016] AC 1081 (at paragraphs 21 and 24); and *LJY v Persons Unknown* [2017] EWHC 3230 (QB); [2018] EMLR 19 (at paragraphs 29-30). The decision of Warby J (as he then was) in *LJY* is particularly germane to the issue of blackmail.

60. Unlike the position that obtained in April 2024, there is now before me a properly constituted claim in misuse of confidential information. As the authors of *Snell's Equity*, 34th edn. make clear at paragraph 9-014, the central question is one of unconscionability. Is the Defendant's state of mind such as to render it unconscionable to make a particular use of information?

61. Mr Cohen also cited *Gee on Commercial Injunctions*, 7th Edn., on the issue of *quia timet* relief. In particular (at paragraphs 2-046 and 2-047):

> "Whether a case is an appropriate one for the grounds of *quia timet* relief has to be considered in the light of all the relevant circumstances known at the time of the hearing of an application for an interim injunction, or at the time of trial. Factors include whether there is a threat of imminent wrongdoing, the seriousness of the damage which might be done imminently, whether the defendant is actively seeking to prevent wrongdoing or is himself threatening to commit a wrong, and whether if damage were done, it would be rectifiable. The test is what is fair comma and just in all the circumstances.
>
> …
>
> On the probability or risk of a wrongful act which must be shown there is not a single fixed test applicable to all cases. This is for good reason, cases are different. A court may restrain demonstrators or paparazzi from trespassing where there is a real risk of this, as opposed to a risk which is purely speculative or fanciful. A court proceeding with caution in a case between neighbours where there was a question of imposing expense may

> refuse relief unless it is clear that unless something is done a wrong will be committed and that damages will not be an adequate remedy."

62. At the April hearing I referred to the test under section 12(3) of the Human Rights Act 1998. It is clear that injunctive relief of this sort should not be granted unless the Court is satisfied that the applicant is *likely* to establish that publication should not be allowed. So that imports a probabilistic standard.

63. The case which most clearly sets out the relevant legal test in this regard is *Lord Browne of Madingley v Associated Newspapers Ltd* [2008] QB 103, at paragraphs 64 and 65. There have been subsequent attempts to reformulate the test but those attempts have not improved the formulation of Sir Anthony Clarke, MR, as he then was. Citing from part of paragraph 64:

> "The essential points are there must be evidence from which the court can infer that the defendant intends to publish particular information or a particular class of information so that a judgment can be made as to the balance to be struck between article 8 and article 10 rights in the light of section 12(3) of the Human Rights Act 1998. It is impermissible to grant a speculative injunction and the defendant must know with particularity what he is or is not allowed to do."

64. Mr Cohen submitted that I should apply a two-step approach. The first stage is to consider the general principles set out in *Gee*. It is only at the second stage should I proceed to consider section 12(3) and the likely outcome of the balance between article 8 and article 10 rights.

65. The Defendant was unable to advance any submissions on this issue, and I have therefore had to do the best I can in all the circumstances. On reflection, I consider that Mr Cohen is correct. Section 12(3) is looking at the carrying out of a balancing exercise in the context of freedom of expression and the importance of Article 10 of the Convention. That is made clearer by section 12(4). Further, the wording of section 12(3) – "likely to establish that publication should not be allowed" – does not on its face require an examination of the issue of risk. In my judgment, the risk of publication raises an anterior question which in my judgment should be considered on the application of the broad principles set out in *Gee*.

66. I also agree with Mr Cohen that there can be little question in the present case but that article 8 would outweigh article 10. That is not to say that article 10 is not in play at all: in my opinion, it is, albeit weakly.

THE CLAIMANTS' CASE BEFORE ME

67. Mr Cohen submitted that the private information about [XX] had been imparted to the Defendant in circumstances of obvious confidence and in the expectation that the Defendant would keep it to himself. The first Claimant's evidence is that [XX]. The Defendant's first witness statement concedes that he has not merely received information [XX], some of those in WhatsApp messages.

68. As for the commercial information claim, Mr Cohen submitted that the information at issue relates to [XX].

69. In relation to the issue of risk of breach, and the need for *quia timet* injunctive relief, Mr Cohen invited me to consider all the circumstances of the case. Although it is true that there was a gap in time between July 2023 and March 2024, Mr Cohen observed that the May and July 2023 emails, properly understood, contain threats of blackmail. The reference to the first Claimant's [XX] in the July "to my friends" email was in the nature of a veneer, the latter covering up a threat to reveal more in due course. Mr Cohen invited me to reject out-of-hand the explanation for these emails given at paragraphs 46-48 of the Defendant's first witness statement.

70. Mr Cohen advanced a series of detailed submissions in relation to the sending of the two parcels in March 2024. His essential points were these:

(1) If the Defendant really wished to move the negotiations forward and do nothing more, it would have been the easiest thing in the world simply to email the first and third Claimants directly, including the documents as a PDF attachment. The Defendant must therefore have intended that others open the parcels.

(2) The Defendant's explanations for sending the parcels, lying about whether he sent them, and then the timing of his acknowledgment that he did send them are incredible.

(3) The Court should not speculate on other possible explanations: either the Defendant is right or the Claimants are.

71. Mr Cohen also relied on other evidence that was not available in April 2024. Before the website gemconfiles.com was shut down someone had posted information relating to the three Claimants. Exactly when that information was posted is unclear. The information includes the following:

> "There is substantial evidence for a serious legal claim against [the Claimants] regarding [XX], stemming from breaches of contract with their ex-business partner, resulting in non-payment of dues in relation to [XX].
>
> Ongoing for a year, their ex-business partner is proceeding to litigation against them now.
>
> For more information, please contact: gemconfiles@gmail.com.
>
> Coming soon here!!
>
> Controversial audio + video clips!!!
>
> (various commercial agreements are also part of the website)"

72. According to paragraph 27 of the Defendant's fourth witness statement:

> "I can confirm that I did not create the website. The team behind it are pursuing international money laundering investigation on

> Gemcon group. When they got in touch with me, I offered them help by providing information about the Claimants not paying my dues and how I had been considering litigation against him. I offered them further help as and when my case progressed."

THE DEFENDANT'S SUBMISSIONS

73. The Defendant repeated his wholehearted apology for having misled the Court. He denied that metropolitan Bangladesh is socially conservative and likened it, following my steer, to Mumbai. The Defendant denied that he has made any sort of threat to the Claimants. His submission on the March 2024 parcels was that all he was doing was to seek to communicate with the first and third Claimants and bring about an out-of-court settlement.

74. The Defendant's overarching submission was that injunctive relief is not required because there is no real risk of further publication.

75. The Defendant advanced other submissions which it is unnecessary for me to summarise.

DISCUSSION AND CONCLUSIONS

76. The Defendant presented his case in a charming and courteous manner. He is both sophisticated and highly-educated. At times he displayed a degree of emotional volatility which may provide a partial explanation for his somewhat irrational behaviour.

77. I cannot ignore the fact that he has lied in two witness statements about the sending of the parcels, and I regret to have to say that I cannot accept his explanations in his third witness statement about his reasons for (1) not acknowledging the sending of the parcels in his first witness statement, (2) not accepting this in his second witness statement, and (3) the timing of his acknowledgment of the lies in his third witness statement. Items (2) and (3) above are, frankly, incredible.

78. The Defendant has also misled the Court in relation to the gemconfiles website. According to his second witness statement, he had nothing to do with that website. Even if he did not set it up, which I suspect he did, the Defendant now accepts that he was the source of the information which I have itemised under paragraph 71 above (although he disputes that he provided copies of the commercial agreements). There is a striking similarity in the wording of the webpage and the Defendant's emails, in particular the use of the term, "dues".

79. The first question to determine is whether the information the Claimants seek to protect in relation to their financial dealings is confidential. In my judgment, it obviously is. This information relates to the personal financial affairs of the Claimants. Until the Defendant acted as he did, it was not in the public domain. Further, the Court identifies a wider public interest in protecting information which a party may seek to disseminate for reasons of blackmail.

80. The second question to determine is whether the fact of [XX] attracts a reasonable expectation of privacy. In my view, that is a more difficult question because, putting

aside the issue of blackmail, [XX]. That, coupled with the element of blackmail, leads to me to conclude that the first Claimant has a good prospect of establishing at trial a reasonable expectation of privacy in relation to [XX].

81. The third question to determine is whether the Claimants are able to discharge the burden reposing on them that injunctive relief should be granted in all the circumstances of this case because, unless restrained, there is an unacceptable risk of further publication by the Defendant.

82. I have concluded that this third question should be answered in the Claimants' favour. My reasons, taken cumulatively, are as follows:

(1) The May and July 2023 emails contain a threat of blackmail. Had there being nothing thereafter, I would have concluded that, given the absence of any activation of the threat, injunctive relief should not be ordered; but that is not the position.

(2) The Defendant's motives for sending the packages in March 2024 are mysterious, but I cannot accept his explanation. In all the circumstances, I accept Mr Cohen's submission that the Defendant's reason for sending the packages was that he knew that the Claimants would interpret this as a threat. It follows that it was a threat.

(3) The Defendant's links to the gemconfiles.com website provides the clearest possible evidence of a real risk of publication. The fact that the website has now been shut down does not mitigate the overall risk. All it does is to remove the risk in this particular respect.

(4) The Defendant is a volatile individual whose word can no longer be trusted.

83. It follows that further injunctive relief should be granted in this case.

POST-HEARING EVENTS

84. After the hearing the Defendant sent me various letters and emails asking me to revisit and/or set aside this judgment on account of a change in circumstances. The Defendant advanced various arguments but his main contention was that there has been a change in the political situation in Bangladesh. All these matters are of course in the public domain. In my judgment, they have no connection with my reasons for granting injunctive relief. It follows that the Defendant's applications must be refused.