Case No: KB-2024-002927
Neutral Citation Number: [2024] EWHC 2621 (KB)

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

The Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 12 September 2024

BEFORE:

MRS JUSTICE HILL

BETWEEN:

FOOT ANSTEY LLP
FOOT ANSTEY CORPORATION LIMITED

Applicants

- and -

SEAN STIMSON

Respondent

MR J STABLES and MR P SINGFIELD appeared on behalf of the Applicant
The Respondent did not appear and was not represented

JUDGMENT
(Approved)

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(Official Shorthand Writers to the Court)

MRS JUSTICE HILL:

1. As a preliminary issue, I have to decide whether to proceed in the absence of the Respondent, Dr Stimson.

2. CPR 23.11(1) provides that "Where…[a] Respondent fails to attend the hearing of an application, the court may proceed in their absence". If an order is made at such a hearing, under CPR 23.11(2), the court has the power to relist it of its own motion or on application.

3. In deciding whether to proceed in the Respondent's absence, I have taken into account the following.

4. *First*, this is an on notice hearing, in that it is clear that there has been lengthy communication between the parties about the issues and about the interim application that is going to be made today. That communication goes back well into last week, and it is apparent from the correspondence that the Respondent was aware of today being the date of the hearing.

5. *Second*, in all of that email communication, including a significant number of emails copied to the court staff yesterday, the Respondent has engaged with the detail of the issues for today's hearing, and at one point signed a consent order, albeit imposing certain caveats, that the Applicant cannot accept, which is the reason for the hearing. So, it is clear to me that he is well aware of what the issues were for this hearing.

6. *Third*, although there was some suggestion in the correspondence that there might be medical or logistical reasons why the Respondent could not attend, he has made no positive application to adjourn today's hearing; nor has he provided any evidence of medical issues or logistical reasons to support any difficulties in attending today.

7. *Fourth*, although he has suggested to the court that he was only told of the listing on 10 September 2024, that does not appear borne out by the correspondence. In any event, that was two days ago, and there has been plenty of time since then to apply to adjourn if he wished to do so.

8. *Fifth*, and perhaps most explicitly, one of the last emails that I have been provided with is from yesterday afternoon, 11 September 2024, at 4.17 pm, where the Respondent said in terms, "Absolutely fine. I won't be there [meaning at the hearing], but I have kept them in the loop. Obviously, this is an interim hearing, and I get the chance to vary, strike out, analyse the evidence, et cetera, at the next hearing." That has been followed up this morning by a specific email to the court along the lines of, "My emails will suffice."

9. So, for all those reasons, I am satisfied that the Respondent has deliberately not attended this morning, knowing that his communications are before the court and accordingly that they can be taken into account to an appropriate degree.

10. I was helpfully taken by counsel for the Applicants to *Pirtek (UK) Limited v Robert Jackson* [2017] EWHC 2834 (QB), and I have been guided by the principles set out at [19] and [20] therein by Warby J (as he then was).

11. Like Warby J in *Pirtek*, I have taken a two-stage approach, considering (1) whether the Respondent had received proper notice of the hearing and the matters to be considered at the hearing; and (2) if so, whether the available evidence as to the reasons for his non-appearance supplied a reason for adjourning the hearing. For the reasons I have given, I am satisfied that (1) the Respondent had received proper notice of today's hearing and the matters to be considered it; and (2) the available evidence as to the reasons for him not being here do not justify an adjournment (albeit noting, again, that he has not sought one).

12. I bear in mind the Human Rights Act 1998, section 12(2). This is applicable here because I have been asked to consider to grant relief which might affect the exercise of the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights, set out in Schedule 1 to the Human Rights Act 1998: see section 12(1).

13. Under section 12(2) if the person against whom an application for such 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. For the reasons set out above I am satisfied that (a) applies.

14. For all these reasons I will proceed to hear and determine the application in the Respondent's absence.

(After further submissions)

Introduction

15. This is the hearing of the Applicants' application for an interim injunction under the Protection from Harassment Act 1997 ("the PHA"), section 3(a). The application is made to restrain the Respondent from attending the Applicants' premises or contacting their employees other than in certain prescribed circumstances, and from attending the premises of other specified bodies who are the charity clients of the Applicants, or contacting the employees of the charities, and from making or carrying out certain threats.

16. The application has been made by way of an application notice dated 4 September 2024, sealed on 5 September 2024. It is supported by a detailed witness statement from Peter Singfield, a partner at Foot Anstey LLP, the First Applicant. The witness statement of Mr Singfield is supported by a lengthy exhibit, PS1, that contains a large number of contemporaneous documents.

17. I have been greatly assisted by the written and oral submissions from counsel for the Applicants, Mr Stables. The Respondent, Dr Stimson, has not attended the hearing today, and I have already given a short judgment explaining why I considered it appropriate to proceed in his absence.

The factual background

18. The background to the application involves a dispute relating to the will of a relative of the Respondent. In summary, the Respondent's aunt passed away in 2021. She left a

will made in 2016 which made provision for three animal charities and a hospice to recover under her estate. It made no provision for the Respondent. This led to a dispute between the Respondent and the Applicants, who are the administrators of the estate, instructed by the beneficiary charities.

19. Previously, the Respondent communicated with another solicitors firm, who were acting as executors of the will. They eventually renounced the executorship of the will and the Applicants were instructed.

20. The Respondent challenges the will on two broad grounds: (i) he alleges that his aunt did not have capacity to make the will; and (ii) he contends that she made a separate will in 2020. On the evidence before me, the Respondent has not substantiated these assertions despite the fact that there has been lengthy communication with him from the Applicants inviting him to do so.

21. My understanding of the current state of the probate proceedings is that the Respondent has been asked to provide a copy of the 2020 will, has so far refused to do so, and this has led to the probate proceedings being at something of a standstill.

22. The application has been prompted by the manner in which the Respondent has communicated with the Applicants in the course of this dispute.

The conduct of the Respondent

23. The detailed evidence of Mr Singfield sets out the Respondent's conduct chronologically and thematically. He has explained in detail why it is the Applicants' case that the Respondent's conduct amounts to harassment.

24. Mr Singfield describes a series of "trigger points" in the dispute over the will. He says that when one such event takes place, this triggers a pattern of behaviour by the Respondent which escalates and becomes, on his evidence, harassing. For example he has referred to November 2022 (when a significant dispute arose about the redirection of the post from the Respondent's aunt), February 2024 (when offers of money being

paid to the charities allegedly relating to the 2020 will were made) and February and April 2024 (when offers of mediation were made).

25. He details all of the alleged conduct by the Respondent in his witness statement. I have in mind in particular what he says at paragraphs 14-31. His statement refers in detail to the supporting evidence.

26. The themes that counsel has helpfully drawn out for me today in the Respondent's alleged conduct, as described by Mr Wingfield, are as follows.

27. *First*, the Respondent has threatened attendance and confrontation at the offices of the Applicants' law firm and of their client charities. Documentation from 7 November 2022, April 2024 and 16 May 2024 supports this. I have in mind in particular the April 2024 email at page 207 of the bundle, which indicated a threat by the Respondent to arrange a "flashmob" to attend at the address of one of the charities, a hospice.

28. *Second*, the Respondent has threatened the use of false and misleading domain names. Evidence shows that the Respondent has emailed indicating that he has purchased certain domain names in the name of the hospice referred to above, and also in the name of the Applicant law firm. He also holds himself out as a director of computer services with a specialism in IT security. Accordingly these threats are ones that need to be taken very seriously, because on the face of it the Respondent is someone who has the knowledge to carry out domain name misuse, which can be very harmful and damaging to businesses.

29. *Third*, the Respondent has made threats to spread malware within the IT systems of the Applicant company and the charities.

30. *Fourth*, the Respondent has made obscene and criminal phone calls. I was taken to the evidence about this particular theme in some detail, because a group of phone calls made on 1 August 2024 are, on the evidence, what has led the Applicants to consider it appropriate to make this application to the court. Moreover the Respondent denies making them.

The telephone call evidence

31. Four phone calls were made between 12.11 and 12.32 pm on 1 August 2024 to female employees of the Applicant law firm. The employees in question, aside from one of them, had not had any dealings with the dispute over the will. Each of those individuals had been asked to explain what happened during the calls, which they themselves made notes of, and I was taken to the notes of those calls.

32. The evidence shows that all four calls involved similarly abusive and sexually offensive language. In relation to one of the calls, the recipient's note is to this effect: "I think he said he wanted to fuck and rape me, but I can't remember how it was said." The name of "David" or "Dave" was used on some of the calls.

33. The evidence of Mr Singfield is that efforts were made to try to identify the person who made these calls.

34. Some voicemails previously left by the Respondent had been recorded by the Applicants. One of the people who received a call on 1 August 2024 had been responsible for transcribing "dozens" of the Respondent's earlier voicemails. She was not therefore was a "casual listener". She said that she thought the caller on 1 August 2024 was the Respondent.

35. The other three individuals had not had direct dealings with the Respondent before, but one of the voicemails was provided to them, and each of them to varying degrees said that they thought it was the same person who had called them on 1 August 2024. One of them said she thought this was the case with 80 to 85 per cent confidence.

36. The suggestion that the Respondent had made these calls was put to him in correspondence by the Applicants. He said that he could prove categorically that it was not possible for him to have been the caller because he had been at the Magistrates' Court on that day; and that he could prove this by reference to other people who were at the court.

37. The Applicants therefore contacted the court in question, namely Swindon Magistrates' Court, to see whether this was the case. Mr Singfield has explained in his witness statement that the result of those enquiries did not support what the Respondent had said. In fact, no formal hearing had taken place. The prosecutor told him at the court of her intention to withdraw proceedings and that he was free to leave. He was allowed into the court with security to briefly speak to a legal advisor but otherwise left the building. The Applicants therefore say that there is a strong case to believe that the Respondent has indeed made these phone calls and that he has lied in denying that.

The draft injunction

38. The draft injunction provides that until judgment on the Applicants' claim, the Respondent shall not:

> "a. attend in person any premises occupied or controlled by the Applicants save by prior agreement with the Applicants and on such terms as the Applicants reasonably require;
>
> b. organise or seek to organise attendance by any other persons at any premises occupied or controlled by the Applicants;
>
> c. telephone, text, email or otherwise contact or communicate with or attempt to contact or communicate with the Applicants, their employees, servants or agents except by way of bona fide communications relating to the Legacy Matter or these proceedings sent to the Designated Email Address and/or by post sent to the Designated Postal Address;
>
> d. engage in any communication with the Applicants, their employees, servants or agents permitted under paragraph 2.3 above that is irrelevant to the Legacy Matter or these proceedings, or that is abusive or threatening or otherwise involves harassment;
>
> e. engage in any computer misuse in respect of the Applicants' computer systems;

f. adopt, use or publish any domain name or other electronic address or identifier likely to mislead as to its use by the Applicants;

g. attend in person any premises occupied or controlled by the Charities, their employees, servants or agents;

h. organise or seek to organise attendance by any other persons at any premises occupied or controlled by the Charities, their employees, servants or agents;

i. telephone, text, email or otherwise contact or communicate with or attempt to contact or communicate with the Charities, their employees, servants or agents;

j. engage in any computer misuse in respect of the Charities' computer systems;

k. adopt, use or publish any domain name or other electronic address or identifier likely to mislead as to its use by the Charities;

l. aid, abet, counsel, or procure any other person to engage in the conduct prohibited [in the paragraphs] above".

39. The terms "Designated Email Address", "Designated Postal Address", "Legacy Matter" and "The Charities" are specifically defined.

40. The order makes clear that the Respondent is not prohibited from (i) making a disclosure to a law enforcement agency regarding an alleged criminal offence or from co-operating with any law enforcement agency regarding a criminal investigation or prosecution; (ii) making a disclosure to a regulator regarding any alleged misconduct, wrongdoing or breach of regulatory requirements; or (iii) making any disclosure required by law.

The legal framework

41. Under the PHA, section 1(1A):

> "A person must not pursue a course of conduct --
>
> (a) which involves harassment of two or more persons, and
>
> (b)which he knows or ought to know involves harassment of those persons, and
>
> (c) by which he intends to persuade any person (whether or not one of those mentioned above) --
>
> (i) not to do something that he is entitled or required to do, or
>
> (ii) to do something that he is not under any obligation to do."

42. The terms of section 1(2) make clear that the test for the Respondent's knowledge of their conduct is an entirely objective one.

43. The power I am being asked to exercise is that under section 3A, which enables individuals to apply for an injunction to protect themselves from harassment within section 1(1A).

44. A "course of conduct" is defined at section 7(3) to which I have had regard.

45. Counsel has helpfully explained that there is to some degree a conflict in the authorities about whether distress on the part of the victim is a necessary ingredient of the tort. However there is here some evidence of distress to the individuals, in particular to the recipients of the four phone calls on 1 August 2024.

46. *Majrowski v Guy's and St Thomas' NHS Trust* [2006] UKHL 34 and a series of other cases indicate that a threshold of seriousness applies in cases of this nature, summarised most concisely by Sir David Eady in *Shakil-Ur-Rahman v ARY Network Limited* [2016] EWHC 3110 to this effect:

> "What matters is that there has to be a minimum threshold of seriousness before the statutory tort can be established … The question will be whether the course of conduct goes beyond the sort of annoyance and irritation that one has to tolerate, as part of living alongside other people in a modern society, and has become 'oppressive and unacceptable' … or 'fairly severe' … so that the law should intervene."

47. It is right to recognise that in some cases there has been a suggestion that it is not appropriate to grant relief of this kind where really what somebody is trying to do is bring a defamation claim. I do not consider that applicable here.

48. Counsel for the Applicants has quite rightly drawn out the sort of defences that the Respondent might rely on under the PHA, and the only ones that appear potentially appropriate are those under section 1(3)(a) or section 1(3)(c). I will return to those.

49. In granting an interim injunction the usual principles are those set out in *American Cyanamid v Ethicon & Co* [1975] UKHL 1. There, the House of Lords decided that the test for whether to grant an interim injunction was: (i) whether there was a serious question to be tried; (ii) whether damages would be an adequate remedy for the plaintiff if the defendant's conduct were not restrained; (iii) if not, whether the defendant would be adequately compensated by the plaintiff's cross-undertaking in damages if the injunction were granted; and (iv) the balance of convenience. If matters were evenly balanced, the status quo should be preserved.

50. However in cases where freedom of expression is involved a different threshold applies. This is because the Human Rights Act 1998 ("the HRA"), section 12(3) provides that no relief which might affect the exercise the Convention right to freedom of expression 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." The meaning of "likely" for those purposes has been held to be "more likely than not": see the discussion in *Khan v Khan* [2018] EWHC 241 at paragraphs 57 to 60.

Analysis and decision

51. It can be seen from the terms of the draft injunction set out above that only some elements of the relief sought affect the Respondent's right to freedom of expression. The threshold set out in the HRA, section 12(3) plainly applies to those aspects of the order sought. Logically, the *American Cyanamid* threshold applies to the remainder of the relief sought. However affording the Respondent the benefit of the doubt (and because I know of no authority directly on the issue) I will apply the HRA, section 12(3) threshold to the entirety of the application.

52. Having reviewed the evidence and considered the submissions, I am satisfied that it is more likely than not that the Applicants would succeed at trial in showing that the Defendant has carried out harassment against two or more people, in the ways described in Mr Singfield's witness statement.

53. It is also clear on the evidence before me that the Applicants are likely to prove that the purpose of those acts was to influence the Applicants to act or not to the act to the advantage of the Respondent and against the legal rights of the charity clients, such that his conduct falls within section 1(1A)(c) of the PHA. In simple terms, the Applicants are likely to prove that the Respondent is trying to stop the execution of the will in a way that benefits others and not him.

54. Being as generous as possible to the Respondent, especially given that he is not here and not represented, it seems to me that the potential defences that he could advance are, as I have indicated, those under section 1(3)(a) or (c) of the PHA.

55. On the face of the material I have been provided with, it seems fanciful to suggest that the Respondent's conduct "in the particular circumstances" was "reasonable", so as to engage the section 1(3)(c) defence.

56. Similarly, under 1(3)(a) it is hard to see how any of the actions described can properly fall within that defence. This only applies where the action in question is pursued "for the purpose of preventing or detecting crime". On the evidence this could only potentially apply, as far as I understand it, to the issue over the redirection of post. Even if there was a genuine basis for thinking that the Applicants had acted in a

criminal way in that regard, the Respondent's conduct would not appear to be for the purpose of preventing or detecting it.

57. I am satisfied that the seriousness threshold is met, and I have had regard to the evidence of some of those individuals who have been shocked or distressed, principally those who received the phone calls and other members of staff within the Applicants' organisation.

58. In my judgment the draft injunction has been carefully worded. There is no attempt in the draft injunction to stop the Respondent communicating with the Applicant on a blanket basis, or indeed to stop him making appropriate reports to regulators and things of that nature as he sees fit. The way in which the injunction is drafted precludes communication with the Applicants other than by way of designated email address communication or designated postal address communication.

59. The draft injunction only seeks to prevent very clearly specified activities: attending in person at the premises save by prior agreement; organising or seeking to organise attendance by others in a similar way; communicating in a way that is abusive or threatening or otherwise involves harassment; engaging in computer misuse; adopting the use of or publishing any domain name that is likely to mislead. Those activities are then repeated as far as the charities are concerned, and there is a final provision preventing the Respondent from aiding and abetting, counselling or procuring anyone else to do those things.

60. The nature of the draft injunction will therefore permit the Respondent to continue to engage in appropriate communication about the dispute over his aunt's will provided the terms of the injunction are complied with. This is not a disproportionate or heavy-handed approach. The Applicants quite rightly do not seek to prohibit his speech to any degree more than is appropriate curtailment of those right. Nothing that he is being restrained from doing is the exercise of a legitimate free speech right.

61. The Applicants are rightly concerned about the welfare of their staff and that without apprehending the Respondent from certain sorts of behaviour there is a very realistic risk that this sort of behaviour will continue. I accept that submission.

62. Given the nature of the damage that could be caused to the Applicants there is a good basis for concluding that damages would not be an adequate remedy for them if the Respondent's conduct is not restrained.

63. He would be adequately compensated by the Applicants cross-undertaking in damages if the injunction were granted.

64. The balance of convenience is in favour of granting the injunction.

65. I have considered the fact that there have been various communications from the Respondent to the court in recent days, including at one point him signing a consent order that gave undertakings that mirrored the limitations on his conduct that are sought by way of injunctive relief. That consent order was not effective: it was not signed by both parties and the Applicants could not accept certain caveats the Respondent placed over it. They did not relate to the limitations on his conduct sought in the injunction. It therefore seems to me relevant that the Respondent was willing to sign the order yesterday. This suggests that he did not regard the terms as egregious or outrageous limitations on his conduct.

66. For all those reasons, I am satisfied that the section 12(3) threshold and the remainder of the *American Cyanamid* test is met, such that it is appropriate to make the injunction that is sought.

67. I intend modify the order to include within Schedule A an undertaking by the Applicants to issue a claim for a permanent injunction within the MAC list within 28 days rather than simply promptly.

68. Finally, in terms of costs, the draft injunction makes provision for costs to be reserved, and so that will be dealt with in the future.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge