

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/09/2014

Before:

THE HONOURABLE MRS JUSTICE SLADE DBE

Between:

QRS

(on behalf of himself and in a representative capacity for all the individuals identified in Confidential Annex 1 to the Amended Claim Form in these proceedings)

Claimant

- and -

(1) DANIEL CHARLES BEACH

(2) RICK KORDOWSKI

(on behalf of himself and in a representative capacity for all other individuals who are involved with him in the operation and/or publication of the website identified as item 6 in Confidential Annex 2 to the Amended Claim Form in these proceedings)

Defendants

Godwin Busuttil (instructed by **Brett Wilson LLP**) for the **Claimant**
No appearance or representation for the **Defendants**

Hearing date: 13 August 2014

Judgment

Mrs Justice Slade:

1. These are the reasons for granting interim injunctive relief in an Order drawn up on 14 August 2014. The Claimant, a partner in and chairman of a firm of solicitors ('the firm') applied for an interim injunction under section 3(1) of the **Protection from Harassment Act 1997** ('PHA') to restrain the Defendants and the individuals the Second Defendant is alleged to represent from harassing him and the individuals he represents. The First Defendant, Mr Beach, a former client of the firm, is alleged to have posted material on websites he controls and to have provided material for a website or websites which the Second Defendant, Mr Kordowski, controls. These actions are said to constitute harassment of the Claimant and those whom he represents. These include other partners in the firm named on the websites. Interim injunctive relief was sought to obtain removal of such material from the internet and

to prevent the Defendants from re-instating it. Further, interim relief was sought to restrain the Defendants from harassing other current or future partners or employees of the firm. Letters of claim sent to the Defendants on 30 July 2014 were not answered.

2. At the hearing of the application for an interim injunction on 13 August 2014 the Claimant was represented by Mr Godwin Busuttil of Counsel. Neither Defendant appeared or was represented. Mr Busuttil submitted that pursuant to CPR 23.11(1) the hearing of the application should proceed in the absence of the Defendants.
3. On 6 August 2014 solicitors for the Claimant sought to have served on each Defendant documents including the Application Notice for the interim injunction together with a Draft Order, the Claim Form, Particulars of Claim and witness statements including that of the Claimant.
4. In his witness statement of 8 August 2014, Andrew Kemp, process server, stated that on 6 August 2014 he went to the farm where Mr Beach lives. He was informed that Mr Beach lived in a bungalow on the farm. At 15:05 he rang on the bell outside one of two bungalows. A lady spoke to him. She confirmed that Daniel Charles Beach continued to reside at the address and would receive anything left there for his attention. The process server effected service by handing the documents to the lady after she confirmed that she would pass the papers to Daniel Charles Beach upon his return to the property.
5. In his witness statement of 8 August 2014 Julian Rozario, process server, stated that on 6 August 2014 he attended an address in Essex. After receiving no reply to his repeated knocking he sought to serve the Application Notice and other documents on Mr Kordowski by leaving them on the doorstep of the property. During the course of the hearing on 13 August 2014 I was told by Mr Busuttil that his solicitor had just been informed that Mr Kordowski was no longer living at the address where Mr Rozario had left the papers.
6. The application for an interim injunction was to be on notice. Despite a submission by Mr Busuttil that I should hear the application for relief against Mr Kordowski without notice, once it was known that service on him had not been effected in accordance with the CPR, in my judgment, as had been the Claimant's intention, he should be given notice of the substantive application. I decided that the application for an interim injunction should not proceed against Mr Kordowski without notice. However I was satisfied that there was a real risk that he may have come into possession of the Litigation Papers which were also sent to him by email in addition to being left for him at his previous address and that unless restrained he may disseminate information in the Litigation Papers which was the subject of any interim injunction granted against Mr Beach. Accordingly an Order was given on an urgent without notice basis restraining him from publishing, communicating or disclosing such papers, with the exceptions there set out.
7. On the evidence of Mr Kemp I was satisfied that Mr Beach had been served in accordance with CPR 6.26 with the Notice of Application, the Particulars of Claim and accompanying documents. The requirements of CPR 23.7 had been satisfied. Further I was satisfied that he had been served with the Claim Form in accordance with CPR 7.5. Mr Beach did not appear at the hearing and had given no reason for

failing to do so. Having regard to the overriding objective and exercising my discretion under CPR 23.11(1) I heard the application for an interim injunction against Mr Beach in his absence.

8. Mr Busuttil applied for an Order under CPR 39.2(3)(a), (c) and (g) that the hearing of the application for injunctive relief be held in private on the basis that publicity would defeat the purpose of the application and that a private hearing was necessary in the interests of justice. Counsel contended that making public the identity of the offending websites, their content and the identity of the Claimant and those he represents would be likely to lead to others accessing the material causing the Claimant and those he represents further harassment.
9. Whilst I accepted that publication of such matters could defeat the object of the proceedings, balancing this risk with the important general rule that a hearing is to be in public, in my judgment the concern of the Claimant could be met by making a different Order. Being satisfied that it was strictly necessary to do so, pursuant to section 6 of the **Human Rights Act 1998** ('HRA'), CPR 39.2 or section 11 of the **Contempt of Court Act 1981** I made an Order that certain matters be withheld from the public in the proceedings before the Court. These are the name of the Claimant, the names of the individuals who the Claimant represents in these proceedings who are identified as the Listed Protected Parties in a Confidential Schedule, the name of the Claimant's firm and the domain names of the websites identified in a Confidential Schedule.
10. As a consequence of these Orders, I gave the Claimant permission to amend the Claim Form and Particulars of Claim. This was necessary to preserve the anonymity of the Claimant, the Listed Protected Parties and the relevant websites.
11. Adopting the approach endorsed by Mr Justice Tugendhat in **The Law Society v Kordowski** [2011] EWHC 3185 (QB), [2014] EMLR 2 in respect of the claims made in those proceedings by a firm of solicitors and a solicitor, Mr Busuttil explained that these proceedings are brought by the Claimant both in his personal capacity and, pursuant to CPR 19.6, in a representative capacity. Those represented by the Claimant were said to be (a) individuals in his firm who are named on and are being harassed by material on the websites, (b) current and future employees of the firm who are not named on the websites but who are at risk of being harassed by the Defendants in the future, particularly by the websites and (c) all lawyers and other persons acting for the Claimant in these proceedings each of whom is at serious risk of being unlawfully harassed by the Defendants.
12. The proceedings are brought against Mr Kordowski both personally and as a representative of all other individuals who are involved with him in the operation and publication of a website operated by him.
13. CPR 19.6 provides:
 - “(1) Where more than one person has the same interest in a claim—
 - (a) the claim may be begun; or

(b) the court may order that the claim be continued,

by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.”

14. The Third Claimant in the Law Society case, an individual solicitor, brought proceedings:

“...on his own behalf and in a representative capacity under CPR r19.6 on behalf of all solicitors in England and Wales and other individuals involved with or connected to the legal profession that are at serious risk of being named on the relevant website. It was contended that the Third Claimant had a common interest and/or grievance in relation to the litigation with those he represented, namely: preventing the harassment of individual solicitors; and preventing the breaches of the Data Protection Act 1998; and the relief sought is beneficial to all.” [160]

Tugendhat J held:

“In my judgment the proceedings by the Second and Third Claimant in respect of the claims for harassment and under the DPA should be continued as they have been begun. Solicitors who have not been named have an interest in the injunction in so far it is quia timet. Consent to be represented is not required, as the authorities show. The class is readily identifiable once persons or firms are named on the website. An injunction would be equally beneficial to all. [162]

The common interest arises from the fact that the claim as pleaded is made in respect of a course of conduct, which includes data processing, which is the same or similar in relation to all the Represented Parties. The common grievance arises from the facts pleaded regarding the operation of the website... [163]”

15. The basis for the Claimant continuing these proceedings in a representative capacity is analogous to that in the Law Society case. However of those sought to be represented I was not satisfied that the category of “future employees of the firm” was sufficiently identifiable to be included.
16. The proceedings are brought against Mr Beach and Mr Kordowski on behalf of himself and in a representative capacity. Having regard to the fact that the hearing of the application as against Mr Kordowski was treated as ineffective and did not proceed except in so far as it concerned the without notice application concerning consequential Orders regarding the Litigation Papers, no determination was made regarding the continuation of proceedings against Mr Kordowski in a representative capacity under CPR 19.6.

17. In support of his application for an injunction, the Claimant relied upon his witness statement of 1 August 2014 of 101 pages with 11 exhibits containing many pages. Also before the Court were witness statements from three other partners of the firm.
18. A chronology of key events was prepared by Mr Busuttil. Since the hearing of the application for interim relief before me did not proceed against Mr Kordowski the summary of key events below does not include those principally involving him. The key events relating to the application against Mr Beach include the following:
 - 18.1. Between 2006 and 2010 the Claimant's firm was instructed by Mr Beach on a number of matters including, in particular, a Public Inquiry on a planning matter.
 - 18.2. Between mid-2010 and the beginning of 2011 Mr Beach pursued a number of complaints about the firm.
 - 18.3. In November 2010 Mr Beach published a defamatory posting concerning the firm, the Claimant and another partner at the firm on a website operated by Mr Kordowski.
 - 18.4. In 2011 the firm issued proceedings against Mr Kordowski regarding the November 2010 posting and an interim injunction was granted. Following the entering of judgment against Mr Kordowski in the **Law Society** proceedings on 15 November 2011 the firm discontinued their proceedings.
 - 18.5. In the spring of 2012 Mr Beach registered and took ownership of three domain names incorporating that of the firm.
 - 18.6. In April 2012 the firm wrote to Mr Beach to complain about his registration and use of one of the domain names. Mr Kordowski replied on Mr Beach's behalf indicating that he was his agent and requesting that all future communications on the matter be directed to him.
 - 18.7. In May 2012 Mr Beach registered and took ownership of two other domain names.
 - 18.8. At the end of 2012 the firm instituted passing off proceedings regarding the use by Mr Beach of one of the domain names.
 - 18.9. On 28 March 2013 the firm wrote to both Defendants stating that they considered them to be pursuing a course of conduct that amounted to harassment of its employees and acting in breach of the injunctions granted by Mr Justice Tugendhat in the **Law Society** case. There was no reply and the websites remained online.

18.10. On 29 April 2013 solicitors for the Claimant wrote to Google asking them to remove the Beach and Kordowski websites from their search engine results. Google replied on 20 May 2013 that as the person responsible for the material on the listed pages appeared to be Mr Daniel Beach and that as he was not named in the Order in the Law Society case they had not voluntarily removed the material.

18.11. On 7 March 2014 an order was made requiring Mr Beach to transfer two domain names to the firm. He has not done so and the websites remain online.

18.12. On 30 July 2014 Letters of Claim in the current proceedings were sent to the parties.

18.13. On 6 August 2014 the current proceedings and application for interim relief were issued.

19. Screenshots of postings on Mr Beach's websites available to view on 30 July 2014 were exhibited to the statement made by the Claimant. These include the allegation by Mr Beach on one of his websites that while the firm was being paid over £200,000 to represent him at a planning inquiry they were in talks with a development company to acquire his property. He alleged that the firm was using the inquiry to increase their fees to remove him from his property and business. Mr Beach reported the Claimant and another partner in the firm to the police for their conduct during the inquiry. He also made a complaint to the Law Society. Neither of these complaints was upheld. He publicised the making of these complaints on his website. Another posting names the firm in conjunction with an allegation of corruption, being betrayed and sold out. Mr Beach invites comments about the Claimant and his firm from readers of the website. Dissatisfied with the outcome of his complaint to the Law Society Mr Beach posted his complaint on a Kordowski website.
20. Offensive material about the Claimant, his firms and lawyers in the firm relating to their dealings with Mr Beach appeared on a website which was apparently operated by Mr Kordowski. For example there was a posting on the website which alleged that the Claimant committed perjury by submitting a witness statement to the High Court containing blatant lies. It is said that such material must have been supplied by Mr Beach and that he can request its removal.
21. The Beach and Kordowski websites contain highly unflattering caricatures of the Claimant and some of his partners which appear to be doctored images taken from the firm's website. One post is titled as being from Danny Beach, the First Defendant. He states that he put the caricature of the Claimant on the site to get the Claimant's and his partners' attention.
22. The makers of the statements before the court write of the distress caused to them by these and the many other offensive postings made by or emanating from Mr Beach over a considerable period of time. Some have had enquiries about the postings from actual or potential clients. There is a real concern that the postings have affected and will affect their business and deter people from applying to work for the firm. They have an apprehension that in any meeting they will have to face questions about the

offensive material and may be asked about it in a social context. The material has been on the internet for a number of years.

Interim injunctive relief

23. The Claimant sought an interim injunction to restrain the Defendants from harassing him and those he represents, in particular by making offensive and distressing postings on the websites they control. Since the granting of the relief sought was likely to affect the exercise of the Convention right to freedom of expression, section 12 of the HRA applies. Accordingly the interim relief sought was not to be granted “unless the court is satisfied that the applicant is likely to establish that publication should not be allowed”. In **Cream Holdings Ltd v Banerjee** [2005] 1 AC 253 Lord Nicholls, with whom the other judges agreed, held at paragraph 22 of the degree of likelihood necessary to satisfy section 12:

“...As to what degree of likelihood makes the prospects of success ‘sufficiently favourable’, the general approach should be that courts will be exceedingly slow to make interim restraint orders where the applicant has not satisfied the court he will probably (‘more likely than not’) succeed at the trial. In general, that should be the threshold an applicant must cross before the court embarks on exercising its discretion, duly taking into account the relevant jurisprudence on article 10 and any countervailing Convention rights.”

24. The Claimant brings his claim under the PHA. The PHA provides:

“1(1) 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.

...

(2) For the purposes of this section ... the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.

(3) Subsection (1) ...does not apply to a course of conduct if the person who pursued it shows—

(a) that it was pursued for the purpose of preventing or detecting crime,

...

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

...

7(2) References to harassing a person include alarming the person or causing the person distress.

(3) A ‘course of conduct’ must involve—

(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person,

...”

25. In **AVB v TDD** [2014] EWHC 1442 (QB) Tugendhat J considered the authorities concerning the requirement to show a “course of conduct”. At paragraph 52 Tugendhat J set out the summary of the law on harassment given by Simon J in **Dowson v Chief Constable of Northumbria Police** [2010] EWHC 2612 (QB) which was in part derived from the judgment of the House of Lords in **Majrowski v Guy’s and St Thomas’ NHS Trust** [2007] 1 AC 224. Simon J set out at paragraph 142 what a claimant must prove:

“(1) There must be conduct which occurs on at least two occasions,

(2) which is targeted at the claimant,

(3) which is calculated in an objective sense to cause alarm or distress, and

(4) which is objectively judged to be oppressive and unacceptable.

(5) What is oppressive and unacceptable may depend on the social or working context in which the conduct occurs.

(6) A line is to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways: ‘torment’ of the victim, ‘of an order which would sustain criminal liability’.”

26. In **Thompson v James** [2013] EWHC 515 (QB) Tugendhat J referred to harassment on the internet in paragraph 407:

“There is nothing new about ... campaigns of vilification: they have existed throughout history where one or more persons have wished to demonise another. But the internet has made them easier for individuals to conduct.”

27. The means of harassment used in the Claimant’s case are those which were considered by Tugendhat J in **Law Society v Kordowski**. Tugendhat J accepted the submissions made on behalf the Third Claimant that:

“61. The publication by the Defendant on the website of the name of the solicitors and individuals, including the Third Claimant, in the knowledge that such publications will

inevitably come to their attention on more than one occasion and on each occasion cause them alarm and distress constitutes harassment under the PHA. Listing any of the Represented Individuals would also constitute harassment for the same reason.

...

64. The publication is an ongoing one on a prominent website; accordingly the distress and alarm caused by the publication will also be continuous. It is reasonable to infer in every case that those posted would suffer such distress and alarm on at least two occasions.”

28. On the evidence before the Court, the attention of the Claimant and the represented individuals has been drawn to the Beach and Kordowski websites or their contents or it is to be inferred that this is likely to occur. The Claimant and his partners have seen and have been asked about the comments made by Mr Beach on the websites. The express intent of Mr Beach in one posting, that of 10 June 2012, was to try to attract the attention of the Claimant.
29. The publications on the websites relied upon by the Claimant in this case allege corruption, failure to act in their client’s interests, conflict of interest and untruthfulness. These statements are far more offensive than the unattractive and unreasonable conduct referred to in Dowson. They cross the line straying into “torment” of the subjects of the vilification. The necessary inference to be drawn from the material is that Mr Beach knew that his conduct constitutes harassment. If there were any doubt about this Mr Beach was so informed by letter dated 28 March 2013 from the Claimant’s firm.
30. On the material before the Court there appears to be no defence to the claim of harassment. The course of conduct does not fall into any of the categories set out in PHA section 1(3).
31. The postings regarding the Claimant and those he represents on the offending websites have not been removed notwithstanding the judgment in the Law Society case, the letter from the Claimant’s firm to Mr Beach of 28 March 2013, the letters of claim and the service of proceedings. Unless restrained by Order there was no reason to suppose that the postings would be withdrawn.
32. I considered whether delay by the Claimant in seeking injunctive relief should lead to the refusal of such relief which otherwise would be granted. It may be said that delay indicates that the course of conduct by Mr Beach has not had the distressing effect claimed. However I was satisfied from the statements before the court that the postings by and about Mr Beach have caused and are causing the Claimant and the individuals named on the websites real distress. Whilst the Claimant waited for some time before taking action to obtain injunctive relief that delay has caused no apparent prejudice to the Defendants or diminished the strength of the claim for harassment.
33. Pursuant to section 12(3) of the HRA no relief is to be granted so as to restrain publication before trial which might affect the exercise of the Convention right to

freedom of expression unless the Court is satisfied that the Applicant is likely to establish that publication should not be allowed. I was so satisfied and granted injunctive relief in terms of the Order drawn up on 14 August 2014.