IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST
[2023] EWHC 416 (KB)

No. QB-2021-004262

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 8 February 2023

Before:

MRS JUSTICE STEYN DBE

B E T W E E N :

WALTER TZVI SORIANO — Claimant

- and -

RICHARD SILVERSTEIN — Defendant

MR B HAMER (instructed by Rechtschaffen Law) appeared on behalf of the Claimant.

THE DEFENDANT appeared In Person.

J U D G M E N T

MRS JUSTICE STEYN:

Introduction

1 This judgment follows the trial of a claim for breach of a contractual undertaking entered into by the defendant when settling a libel claim brought against him by the claimant. The claimant contends that by publishing two tweets on 19 October 2021 and 22 October 2021, the defendant breached the Settlement Agreement that he had entered into on 28 July 2021.

2 The claimant is a businessman based in London. The defendant is based in the state of Washington in the United States of America, and he runs his own blog and Twitter account.

3 There is no dispute as to jurisdiction. The Settlement Agreement provides that the Courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with it; and the governing law is that of England and Wales.

4 The claimant has been represented by Mr Ben Hamer, of counsel, who has appeared in person. The defendant has appeared via a remote video-link from his home in Seattle in the state of Washington, having complied with the conditions imposed by Lavender J by order dated 4 November 2022, as varied by Heather Williams J on 15 November 2022.

The Facts

5 I have been provided with a case summary and an agreed statement of facts. It has not been necessary to hear any evidence, and neither party suggested that I should do so.

6 On 14 July 2020, the claimant brought a claim for libel, misuse of private information, data protection and harassment against six US-based defendants based on publications made online. Mr Silverstein was the sixth defendant in those proceedings. The claim against him ("the underlying claim") was brought in respect of two articles, namely one published on 30 January 2020 entitled "Poor Walter Soriano Beset by 'Dark, Hidden Forces'", and another published on 14 February 2020 entitled, "Walter Soriano: Bibi's Bully and Fixer for Putin's Favourite Oligarch".

7 The claimant's applications to serve the defendants out of the jurisdiction were determined, in the case of the first to fifth defendants, by Jay J on 15 January 2021 ([2021] EWHC 56 (QB)) and, in the case of Mr Silverstein, by Johnson J on 13 April 2021 ([2021] EWHC 873 (QB)). Johnson J granted the claimant permission to serve Mr Silverstein out of jurisdiction in respect of the libel claim, but not the claim for misuse of private information. Mr Silverstein appealed but the underlying claim settled prior to the hearing of the appeal.

8 On 8 September 2021, the underlying claim was stayed by Master Eastman on the terms set out in the confidential schedule to the Tomlin order which included a Settlement Agreement entered into by Mr Soriano and Mr Silverstein on 28 July 2021 ("the Settlement Agreement").

9 Although the defendant has represented himself in these proceedings, he was represented by Eversheds Sutherland LLP in the underlying claim and took legal advice before entering into the Settlement Agreement. Clause 2.2 of the Settlement Agreement provided, so far as relevant:

"Mr Silverstein will not:

"2.2.1 republish the allegations concerning Mr Soriano contained within the Articles, as set out in paragraphs 11.7 and 11.8 of the Amended Particulars of Claim in the Proceedings (the 'Allegations') or any allegations to similar effect. For the avoidance of doubt, Mr Silverstein is free to republish the content of the Articles insofar as it does not refer to Mr Soriano …"

10 Clause 3.2 provides:

"Mr Silverstein will not write about Mr Soriano on the Website or otherwise publicly in the future, except to the extent that he is republishing or reporting assertions that have already been put into the public domain, in whatever form of media (including print, broadcast and online), including by way of TV broadcasts, newspapers and media and news websites (without restrictions), subject to clause 2 above."

11 The "Allegations", as defined in clause 2.2.1 of the Settlement Agreement were:

"11.7.1 the Claimant is an individual who makes illegal arrangements for corrupt oligarchs;

11.7.2 the Claimant hires hackers to illegally spy on his clients' enemies;

…

11.8.1 the Claimant makes legal arrangements for Oleg Deripaska and Israeli Prime Minister Benjamin Netanyahu."

12 On 19 October 2021, the claimant published a tweet ("the First Tweet") which stated:

"FBI agents swarm Washington home of Russian oligarch Oleg Deripaska. Walter Soriano, the shady Israeli tough-guy 'security consultant' who sued me in both Israel and the UK has been a major player in … Deripaska's clique.

https://www.nbcnews.com/politics/justice-department/fbi-agents-swarm-d-c-home-russian-oligarch-oleg-deripaska-n1281844 via @nbcnews".

13 The claimant's solicitors sent a letter before action on 20 October 2021 to the defendant's solicitors alleging that the publication of the First Tweet was in breach of clauses 2.2.1 and 3.2 of the Settlement Agreement and indicating the claimant's intention to bring proceedings unless the defendant removed the tweet within twenty-four hours and made a full apology.

14 The defendant's solicitors responded on 22 October 2021, having received the letter after hours on 20 October, that the defendant did not accept that the First Tweet breached the Settlement agreement but they stated:

"Our client's intent and understanding is that the dispute between himself and your client has been finally resolved. Our client has

> therefore deleted the specific tweet complained of, although he does not admit to any breach of the Settlement Agreement and said deletion should not be taken to be an admission of any alleged breach."

15 On 22 October 2021, the defendant deleted the First Tweet. Later the same day, he published a further tweet ("the Second Tweet") which states:

> "As FBI targets Russian oligarch, Oleg Deripaska in possible criminal probe, Israeli Spy Companies Link Flynn, Deripaska, and Senate Intelligence Committee Target Walter Soriano https://forensicnews.net/israeli-spy-companies-show-critical-link-between-flynn-deripaska-and-senate-intelligence-committee-target-walter-soriano/… via @forensicnewsnet".

16 On 25 October 2021, the claimant's solicitors wrote to the defendant's solicitors asserting that this further tweet showed that the defendant had no genuine intention to leave the dispute behind and seeking its immediate removal. The defendant did not respond to that letter. The second tweet remains online.

17 The claimant brought this Part 8 claim for breach of contract on 18 November 2021. On 3 September 2022, the defendant published a further tweet ("the Third Tweet") which the claimant relies on in support of his claim for an injunction, although he has not brought a claim in respect of it. The Third Tweet stated:

> "Russian oligarch Oleg Deripaska, client of UK security consultant, Walter Soriano, charged with violating sanctions https://www.axios.com/2022/09/29/russian-oligarch-sanctions-charges-putin-DOJ".

The Third Tweet remains online.

18 The parties agree that the only issues for the court to determine are (a) whether there was a breach of clause 2.2.1 of the Settlement Agreement; and (b) whether relief and costs should be granted.

The Legal Framework

19 The underlying claim was a defamation claim, but this claim is brought for breach of contract. When a contractual undertaking is breached, a claimant may apply to enforce the terms of the agreement and seek an injunction either through the existing proceedings, if there is a proviso in the Tomlin order, or, as the claimant has done in this case, by bringing a Part 8 claim.

20 The general approach to the interpretation of undertakings is well settled and not in dispute. In *Lukoil Asia Pacific PTE Limited v Ocean Tankers (PTE) Limited* [2018] EWHC 163 (Comm), Popplewell J observed at [8]:

> "The court's task is to ascertain the objective meaning of the language which the parties have chosen in which to express their agreement. The court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. The court must consider

> the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to the objective meaning of the language used. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other. Interpretation is a unitary exercise; in striking a balance between the indications given by the language and the implications of the competing constructions, the court must consider the quality of drafting of the clause and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest; similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated. It does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each."

21 In this case, the Settlement Agreement compromised ongoing defamation proceedings. As Collins Rice J observed in *Ranger v Pycraft* [2021] EWHC 502 (QB) at [19]:

> "Undertaking 'not to publish any further defamatory statement of the same or similar nature to the posts complained of' is a formula in common currency in defamation litigation: judicially observed to be of 'long and hallowed usage' but with a caution against being 'interpreted too widely'; (*Bentinck v Associated Newspapers* [1999] EMLR 556 at 568-569)."

22 In *Bentinck*, the contractual undertaking was to not publish "any words to the same or similar effect" to those complained of in the identified article. Similarly, by clause 2.2.1, the defendant undertook not to publish the allegations "*or any allegations to similar effect*". The phrase "*to similar effect*" is also commonly used where an injunction is granted to restrain the continuing or further publication of a defamatory statement. In *Bentinck*, HHJ Richard Walker (sitting as a Judge of the High Court) held that while the court "must not allow the phrase to be interpreted too widely", it encompassed an allegation which was on "the same subject-matter" alleging "the same basic characteristic" (in that case "meanness"), albeit the meanness alleged was "of a lesser scale than that alleged in the first article" (569).

Did the First Tweet breach the Settlement Agreement?

The Parties' Submissions

23 Mr Hamer does not contend that the allegations in the First Tweet were "the same" as the allegations as defined in clause 2.2.1 of the Settlement Agreement, but he submits that what was alleged was "to similar effect" to the meanings pleaded in paragraphs 11.7.1 and 11.8.1 of the Amended Particulars of Claim in the underlying claim and so breach clause 2.2.1 of the Settlement Agreement.

24 In support of this submission, Mr Hamer relies on the following points:

(i) In the First Tweet, both the claimant and Oleg Deripaska are mentioned; as he put it, they are inextricably linked together in the same tweet.

(ii) The First Tweet refers to Oleg Deripaska being investigated.

(iii) It states that Oleg Deripaska's home was attended by a number (described as "a swarm") of FBI agents, which readers would take to mean that the investigation was serious.

(iv) The First Tweet refers to the claimant as "*the shady Israeli tough guy*" and a "*major player in the Deripaska's clique*". The word "*shady*" would be understood by a reasonable reader to mean the claimant is dishonest, dodgy or capable of doing illegal things.

(v) The combination of the description of the claimant as "shady", together with the allegation of being "a major player" in a "clique" of a man who was being investigated by the FBI suggests the claimant is, or there are grounds to suspect he is, involved in illegal activity.

(vi) This meaning is further fortified in the mind of the reader by the use of inverted commas around the words "security consultant", indicating to a reasonable reader that the "*shady ... tough guy*" is not really a security consultant but is someone who is up to no good.

(vii) Finally, the claimant contends that the link in the First Tweet to NBC News adds to the gravity of the allegation in the sense of providing support for the allegation that FBI agents had "*swarm[ed]"* Mr Deripaska's home in Washington DC.

25 Mr Silverstein's first contention in response is that it is improper for the claimant to rely on the First Tweet in this claim, given that he voluntarily deleted it and the only relief sought is an injunction, which he submits cannot be granted in respect of a publication that has already been removed.

26 However, if the court is prepared to consider the allegation of breach by publication of the First Tweet, Mr Silverstein contends the First Tweet did not contain any statements that are to a similar effect to the allegations in paragraphs 11.7 and 11.8 of the Amended Particulars of Claim. In support of his submission, Mr Silverstein draws attention to the following points:

(i) The First Tweet refers to Oleg Deripaska as an "oligarch", but it does not describe him as a "corrupt oligarch".

(ii) The First Tweet does not state that the claimant is an individual "who makes illegal arrangements" for Oleg Deripaska, or for any other oligarch;

(iii) The statement that the claimant has been a "major player in … Deripaska's clique" simply means that he is an associate of Mr Deripaska;

(iv) The First Tweet does not state anything similar to the allegation in paragraph 11.7.2 of the Amended Particulars of Claim, that he "hires hackers to illegally spy on his clients' enemies". (In his oral submissions, Mr Hamer made clear that paragraph 11.7.2 is not relied on by the claimant.)

(v) There was no mention of Israeli Prime Minister Benjamin Netanyahu in the First Tweet.

27 Mr Silverstein emphasised that the First Tweet does no more than indicate that the FBI is investigating Mr Deripaska, but what the investigation is about is not known or stated, and the reasonable reader would appreciate that a person is to be treated as innocent until proven guilty. In relation to the claimant, the First Tweet did not state that he had anything to do with the investigation into Mr Deripaska; it merely suggested some sort of association between the claimant and Mr Deripaska. The defendant submits that this tweet is not to similar effect to the allegations in paragraphs 11.7.1, 11.7.2 or 11.8.1, as there is no reference to corrupt oligarchs, there is nothing to indicate the claimant participated in any illegal arrangements, there was no mention of hackers or spying and no reference to Benjamin Netanyahu.

28 Finally, Mr Silverstein asserted that the First Tweet complies with clause 3.2 of the Settlement Agreement in that he republished or reported assertions that had already been put into the public domain by NBC News, a major US news organisation. However, when I sought to question how he puts this aspect of his case, Mr Silverstein made clear that he does not contend that if a matter has been put into the public domain, he could publish allegations to the same or similar effect to the allegations in paragraphs 11.7.1, 11.7.2 or 11.8.1 of the Amended Particulars of Claim without breaching the Settlement Agreement. As clause 3.2 is expressly made subject to clause 2, it is clearly right that clause 3.2 does not enable him to publish that which he has undertaken in clause 2 not to publish.

Analysis

29 The fact that the defendant removed the First Tweet before this claim was issued is a relevant factor in considering whether to grant injunctive relief, but I do not accept the defendant's submission that it has the effect of precluding the claimant from alleging that publication of the First Tweet constituted a breach of the Settlement Agreement.

30 In my judgment, the First Tweet is clearly to similar effect to the allegations in paragraphs 11.7.1 and 11.8.1 of the Amended Particulars of Claim. The reference to FBI agents swarming Mr Deripaska's home in Washington would be understood by a reasonable reader to mean that there were grounds to suspect that Mr Deripaska had engaged in illegal activities. The reference to the claimant being a "*major player*" in the "*clique*" of a "Russian oligarch" (Mr Deripaska) would indicate to a reasonable reader that the claimant is within Mr Deripaska's inner circle. When these elements are combined with the description of the claimant as "shady" (which conveys the impression of dishonesty and of being engaged in potentially unlawful activities) and the implication that his role is something other than the claimed one of being a security consultant, in my view, the meaning conveyed to a reasonable reader would be that there are reasonable grounds to suspect the claimant of involvement with Mr Deripaska in illegal activity.

31 The subject-matter is the same, and the essential allegation of involvement in illegal activity with Mr Deripaska is the same, albeit the meaning is of a lesser gravity than the allegations in paragraphs 11.7.1 and 11.8.1. In my judgment, the defendant's submissions as to the meaning of the First Tweet are unrealistic, not least as they ignore key aspects of the tweet, such as the description of the claimant as a "*shady … tough guy 'security consultant'*". The presumption of innocence would not avoid a reasonable reader understanding that there are reasonable grounds for suspicion in relation both to Mr Deripaska and the claimant.

32 Accordingly, the claimant has established that the publication of the First Tweet was in breach of clause 2.2.1 of the Settlement Agreement.

Did the Second Tweet breach the Settlement Agreement?

The Parties' Submissions

33 In relation to the Second Tweet, Mr Hamer's contention is, again, that what was alleged was "to similar effect"(albeit not the same) as the allegations in paragraphs 11.7.1 and 11.8.1 of the Amended Particulars of Claim in the underlying claim, and so breach clause 2.2.1 of the Settlement Agreement.

34 In relation to the Second Tweet, Mr Hamer emphasises:

(i) Oleg Deripaska is identified as an "oligarch".

(ii) It is disclosed, in effect, that Mr Deripaska is a suspect in a "criminal probe".

(iii) The criminal investigation into Mr Deripaska is being undertaken by the FBI, which a reasonable reader would understand as indicating there are reasonable grounds for suspicion and that it is a serious matter.

(iv) In the same sentence as the allegation is made against Mr Deripaska, the tweet identifies that the claimant is also being investigated and that there is a link between the two men (and Flynn).

(v) The association between the claimant and Mr Deripaska is described as a "critical link".

(vi) The tweet provides a hyperlink to a Forensic News article (an organisation which was a defendant in the underlying proceedings).

35 Again, the claimant contends this amounts to a meaning that is sufficiently similar to the allegations in paragraphs 11.7.1 and 11.8.1 in suggesting that there are reasonable grounds to suspect Mr Deripaska of illegal activity and that the claimant is mixed up in such wrongdoing. Mr Hamer submits that the purpose of the Settlement Agreement was to stop the defendant insinuating that the claimant was up to no good with Mr Deripaska, and yet that is what he suggested in the second tweet in breach of clause 2.2.1.

36 In response, Mr Silverstein emphasises that the second tweet refers to Oleg Deripaska as a target only of a *possible* criminal probe and that there is a presumption of innocence. In addition, the tweet does not state that Mr Deripaska is corrupt, the tweet does not indicate that the claimant has made illegal arrangements for Mr Deripaska; it merely states that Israeli spy companies link the claimant and Mr Deripaska. There is nothing in the tweet to say what the link is between Mr Deripaska and the claimant, merely that there is one. The meaning is that they are associates in some unknown regard. There is also no suggestion that the investigation into the claimant is related to the FBI investigation and, again, there is no reference to Mr Netanyahu.

37 Having regard to these differences, the defendant submits that even if, contrary to his submissions, the First Tweet could be said to be to similar effect to the allegations in 11.7 or 11.8 of the Amended Particulars of Claim, the same cannot be said of the Second Tweet.

Analysis

38 The Second Tweet clearly seeks to draw a link - described as a "*critical link*" in the hyperlink to which reference is made in the tweet - between the claimant, who is himself described as being the subject of an investigation, and Mr Deripaska, who is described as the target of a possible criminal probe by the FBI. In my judgment, the meaning conveyed to an ordinary reasonable reader by the Second tweet is that there are reasonable grounds to investigate Mr Deripaska's involvement in criminal activity and also to investigate the claimant's involvement with him in such activity.

39 Although the meaning of the Second Tweet is a little lower down the scale of seriousness compared to the First Tweet, and both are less serious than the allegations in paragraphs 11.7.1 and 11.8.1 of the Amended Particulars of Claim, the subject matter is, again, the same, focusing as it does on possible illegal activity on the part of Mr Deripaska and the claimant together. I agree with the claimant's submission that the Second Tweet is to similar effect, albeit not the same effect, as the allegations in paragraphs 11.7.1 and 11.8.1, and therefore, in publishing it, the defendant breached clause 2.2.1 of the Settlement Agreement.

Should the Court Grant an Injunction?

The parties' submissions

40 The grant of an injunction is an equitable remedy. Although I have found that the defendant breached the Settlement Agreement, it does not necessarily follow that I should grant an injunction. An important factor in determining whether to do so is whether there is a real and substantial risk that the defendant will breach the contractual undertaken he has given in future if an injunction is not granted.

41 In support of the claimant's application for an injunction, Mr Hamer submits that there are strong public policy reasons to encourage parties to settle, including by means of Tomlin orders. As Sharp LJ observed in *Mionis v Democratic Press SA & Ors* [2017] EWCA Civ 1194; [2018] QB 662, at [88] to [91]:

> "88. There were obvious advantages to both sides to this litigation, in reaching a settlement, as there are for litigants more generally. As Lord Bingham put it:
>
> > 'The law loves a compromise. It has good reason to do so, since a settlement agreement freely made between both parties to a dispute ordinarily commands a degree of willing acceptance denied to an order imposed on one party by court decision. A party who settles foregoes the chance of total victory, but avoids the anxiety, risk, uncertainty and expenditure of time which is inherent in almost any contested action, and escapes the danger of total defeat.
> >
> > 'The law reflects this philosophy, by making it hard for a party to withdraw from a settlement agreement, as from any other agreement, and by giving special standing to an agreement embodied, by consent, in an order of the court': see the foreword to *Foskett, The Law and Practice of Compromise*, 4th ed (1996), p.xi.

> 89. I would add that settlement does not only serve the private interests of the litigants, but the administration of justice and the public interest more generally, by freeing court resources for other cases. The law therefore encourages and facilitates the mutual resolution of disputes by various means, for very sound reasons of public policy; and there is obviously an important public interest in the finality of settlement.
>
> 90. The parties in this case decided, with the benefit of expert legal advice on each side, to enter into a contract that compromised their legal proceedings. They chose to do this, using the settlement mechanism of a Tomlin order, and thus converted their putative rights and/or liabilities in the litigation into a contract. The implications (and advantages to litigants) of using the mechanism of a Tomlin order are easy to comprehend; settlement is facilitated as it can be on confidential terms which go beyond the boundaries of the claim; and in the event of a breach of those terms, enforcement can take place within the existing action by a summary procedure, in which an application can be made to convert the contractual obligations into ones enforceable by judicial process. If the order made by the court is breached, then enforcement can follow in the usual way. It is generally no part of that enforcement process to litigate or revisit the underlying merits of the dispute that gave rise to the litigation in the first place.
>
> 91. Parties are of course generally free to determine for themselves what primary obligations they accept; and legal certainty requires that they do so in the knowledge that if something happens for which the contract has made express provision, then other things being equal, the contract will be enforced (*pacta sunt servanda)*. This is a rule of public policy of considerable importance. Furthermore, the principled reasons for upholding a bargain freely entered into, obviously apply to one that finally disposes of litigation with particular force." (Emphasis added.)

42 Mr Hamer emphasises the timing of the tweets, coming shortly after the Settlement Agreement was entered into and only a month after the Tomlin order was made. He invites the inference that, in deleting the First Tweet, the defendant at least suspected that it was in breach of the Settlement Agreement. Mr Hamer refers to the fact that, rather than simply deleting the First Tweet and apologising for the breach, the defendant deleted it while denying any breach and posted the Second Tweet the same day. He contends that this suggests that the defendant will not move on, and so there is a real risk of further breaches in the absence of an injunction.

43 Mr Hamer submits that an important factor is that the defendant has still not removed the Second Tweet. And he relies on the Third Tweet, albeit it is not part of the current claim and he does not seek a determination that it is a breach of the Settlement Agreement, as showing that the defendant again returned to the same subject matter more recently, suggesting that there is a real risk of further breaches.

44 Mr Hamer submits that the burden on the defendant as a result of the undertaking was not a heavy one.

45 Finally, Mr Hamer refers to the fact that in publishing the tweets, the claimant is bringing them to the attention of his 13,200 followers. And he relies on the fact that the defendant chose to hyperlink Forensic News and drive traffic to them through his tweets in the knowledge that they are a defendant to the underlying claim.

46 In all these circumstances, Mr Hamer submits there is a real and substantial risk of further publication by the defendant in breach of the Settlement Agreement which the court should restrain by granting an injunction.

47 Mr Silverstein submits that the court should ignore the Third Tweet as it is not part of the current claim or any pending claim. He also submits that the court should ignore a further tweet referred to in the claimant's skeleton argument, but not referred to in the agreed statement of facts. In addition, as I have already noted, he submits the court should not grant injunctive relief based on his posting the First Tweet, given that he had deleted it before the claim was brought. Beyond those submissions, the defendant did not make any separate written submissions opposing an injunction if he is wrong on the question of breach; nor, in response to my invitation to do so, did he make any further oral submissions on that issue.

Analysis

48 In considering whether to grant an injunction, I have had regard to section 12 of the Human Rights Act 1998 and the importance of the Convention right to freedom of expression. As Sharp LJ observed in *Mionis*, at [67]:

> *"... section 12 explicitly requires the court to consider the Convention right to freedom of expression, before granting relief which may affect the exercise of that right, and in my judgment it does so, notwithstanding the relevant restriction appears in a contract between private parties."*

She agreed with counsel that:

> *"... a contrary interpretation would imply a substantial and unwarranted limitation on the scope of section 12 ..."*

49 In this case, the grant of an injunction clearly will affect the defendant's exercise of his right to freedom of expression to the extent of the undertakings he gave in the Settlement Agreement. It is necessary to take account of the public interest in the public being able to receive the information that the defendant will be restrained from publishing, as well as the rights of the parties. But it seems to me that the following observation of Sharp LJ in *Mionis* at [67] applies with equal force in the circumstances of this case:

> "However, the fact that the parties have entered into an agreement voluntarily restricting their article 10 rights can be, and in my judgment in this case is, an important part of the analysis which section 12 then requires the court to undertake. Whilst each case must be considered on its facts, where the relevant contract is one in settlement of litigation, with the benefit of expert legal advice on both sides, particularly where article 10 issues are in play in that litigation, it seems to me that it would require a strong case for the court to conclude that such a bargain was disproportionate and to refuse to enforce it other than on ordinary contractual or equitable principles."

50 This is a case where the relevant contract is one in settlement of litigation, the underlying claim was a libel claim in which article 10 issues were in play, and both sides had the benefit of expert legal advice.

51 In my judgment, there is an important public interest in enforcing the Settlement Agreement, as follows from the remarks of Sharp LJ in *Mionis* at [88] to [91] to which I have referred. The First Tweet was a very obvious breach of the undertaking the defendant had given. Although he took it down swiftly, he has not acknowledged that it crossed the line or apologised for it. It is striking that on the day he took it down he chose to post a further tweet on the same subject matter which he has continued to publish ever since. The defendant has not said, even when given an opportunity to do so in his oral submissions, that if the court found the second tweet breached the terms of the Settlement Agreement, he would take it down; nor has he provided any reassurance that, if he was mistaken in his understanding of clause 2.2.1, he will, in future, abide by its terms.

52 These factors suffice, in my view, to show that there is a real and substantial risk of future breaches of the Settlement Agreement that the defendant chose to enter into, such that it is appropriate to grant an injunction. I do not consider it necessary to address any subsequent tweets on which the claimant has not sued in this claim. In my judgment, in the circumstances, the grant of an injunction to enforce the Settlement Agreement is not a disproportionate interference with the article 10 rights that are engaged.

53 In conclusion, for the reasons I have given, I find that the defendant has breached clause 2.2.1 of the Settlement Agreement by publishing both the First and Second Tweets, and I will grant injunctive relief to enforce the terms of the Settlement Agreement. I will hear the parties as to the precise terms of the injunction.

LATER

54 I will make an order for the defendant to pay the claimant's costs, subject to detailed assessment, if not agreed. Although the defendant opposes the application for costs, the ordinary rule is that the losing party should pay the winning party's costs. The reasons that the defendant has given for seeking to depart from that rule go to the amount of costs rather than to the question of principle, whether or not the claimant should be entitled to his costs. It does not seem to me that there is any reason of principle to depart from the ordinary rule, and so in my judgment it is appropriate to make an order in the claimant's favour for costs. But I accept the defendant's submissions that the amount should be subject to detailed assessment to consider whether the amount claimed by the claimant is reasonable and proportionate, and so, for that reason, the order I make is for detailed assessment rather than summary assessment.

LATER

55 The claimant seeks a payment on account of costs pursuant to CPR 44.2.8 in circumstances where I have made an order for costs in the claimant's favour. The Claimant's statement of costs in the Form N260 amounts to a grand total of £66,347. I have ordered detailed assessment of that. The question at this stage is whether it is appropriate to make a payment on account in a reasonable sum.

56 It seems to me that there is no good reason not to do so. And so the question is, what is a reasonable sum, having regard to the details that are currently before me in relation to the costs incurred in these proceedings by the claimant? Looking at the schedule of work done and the summary statement of costs generally, and having regard in particular to the fact that

the claimant has been represented by junior counsel and, on the face of it, the rates in respect of specialist solicitors do not appear to be excessive - although there may be a question (on detailed assessment) as to whether or not it was reasonable for as much work to be undertaken by the A-grade solicitor as has been, rather than by a solicitor at a lower (less costly) grade - it seems to me that in applying for a payment on account of 50% of the total is, broadly, a reasonable sum.

57 In my judgment, the appropriate amount to order in terms of a payment on account is £30,000, and as the defendant has not objected to the time period of fourteen days as being a reasonable period, I will make the order for that sum of £30,000 to be paid on account within fourteen days.

CERTIFICATE

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