Neutral Citation Number: [2008] EWHC 1051 (QB)

Case No: HQ07X04121

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 May 2008

Before :

THE HONOURABLE MR JUSTICE EADY

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Between :

(1) P
(2) Q
(3) R **Claimants**

- and -

MARK GERARD QUIGLEY **Defendant**

- -
- -

Alexandra Marzec (instructed by **Eversheds**) for the **Claimants**
The Defendant in person

Hearing date: 7 May 2008

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE EADY

Mr Justice Eady :

1. On 7 May 2008 applications were listed before me for the grant of summary judgment against the Defendant, Mr Mark Quigley, on the part of all three Claimants, known as P, Q and R. As matters developed, it seemed to me to be clear that I was in a position to grant judgment in respect of the claims of P and Q, based on threats of infringement of privacy, but that it would be necessary to adjourn the application so far as R was concerned. This claim, brought on behalf of a corporate entity, is framed in contract rather than breach of privacy. During the course of the hearing, a number of arguments were developed by the Defendant, some of which had not been foreshadowed in either his defence or any of the other material he had supplied. I gave him three weeks to serve an amended defence, together with any other evidence he wished to rely upon, and R was to have a further two weeks in order to respond, if so advised.

2. I am now in a position to give my reasons for acceding to the application by P and Q for a permanent injunction. I had granted an interim injunction on 23 November 2007 which was, so far as material, to the following effect:

> "The Defendant must not, whether by himself or by any other person, publish, communicate or disclose to any other person (other than to legal advisers instructed in relation to the proceedings for the purpose of obtaining legal advice in relation to these proceedings): … any information or purported information concerning the First and Second Claimants', and each of their, sexual and private conduct or behaviour or thoughts or desires, whether concerning their sexual behaviour with each other or with any other person."

3. My decision to grant an order in these terms was based on evidence dated the same day from P. She explained the nature of the activities carried on by the corporate Claimant, known as R, and also stated that between 1990 and 1999 the Defendant had been employed by that institution. The Second Claimant, known as Q, is P's husband and also a former director and chief executive of R.

4. P explained that an investigation had taken place at about the time of the Defendant's resignation in 1999, the conclusions of which suggested that he might have been diverting business opportunities from R in breach of his contractual obligations. These matters were reported to the police and criminal proceedings were taken, but according to the evidence they had to be abandoned when, part way through the trial, the Defendant was admitted to hospital amid concerns as to his mental health. He was diagnosed with bipolar disorder. (In his defence in these proceedings the Defendant subsequently described himself as "a clinically diagnosed manic depressive".)

5. Following the conclusion of the criminal proceedings, an action for malicious prosecution was launched by the Defendant against R, during the course of which he made various allegations against P and Q. In due course, the proceedings were settled on the basis of a Tomlin order dated 1 April 2005. This included a contractual obligation on the Defendant (who was at that time, of course, described as "the Claimant") expressed in these terms:

> "1. The terms of this Agreement are agreed for the purpose of settling all past, present or future claims or causes of action against the Defendant and any entities or persons associated with it. This includes, but is not limited to, its subsidiary or associate companies, its sponsors, funders or governing bodies, and any of its past, current or future trustees, directors, officers, employees, workers or associated staff, whether those claims or causes of action arise out of or in connection with the criminal prosecution of the Claimant, his work for the Defendant, this action, or any other matter.
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> …
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> 3. The Claimant shall not make or publish any derogatory or disparaging statements, comments, remarks, information or communication of any kind whatsoever, nor encourage, cause, assist or permit others to do so, in relation to the Defendant or any of the persons mentioned in paragraph 1."

P and Q were among the persons mentioned in that paragraph.

6. Little happened for the next two-and-a-half years. Then a threatening letter dated 22 November 2007 was received, in the light of which the urgent application was made to me for the interim relief I mentioned. The Defendant seemed clearly to be making threats to publish what he called a "novella" on the Internet, in which P and Q would appear, thinly disguised, as partaking in various unsavoury and fictitious sexual activities. Although the threats related to imaginary activities, the publication would plainly be likely to cause distress and embarrassment and would constitute an unacceptable intrusion into a personal and intimate area of their lives.

7. It is now sought to restrain the threatened publication permanently on the basis of an alleged infringement of the rights of P and Q protected by the terms of Article 8 of the European Convention on Human Rights and Fundamental Freedoms. In my judgment those rights are plainly engaged. So too are the Defendant's Article 10 rights, but the "ultimate balancing act", which is now to be carried out in the light of the modern authorities in this field, comes clearly down in favour of restricting publication. That is because there is no conceivable public interest in making such scurrilous allegations against P and Q, whether directly or under the transparent disguise mentioned. The only effect of carrying out the threats contained in the 22 November letter would be to cause embarrassment and distress to the two individuals concerned. Very little value can be attached to the Defendant's freedom to do that. There is no suggestion, for example, that this is a libel claim in disguise and that P and Q are seeking to suppress defamatory allegations which he would wish to allege are true. What they are seeking to restrain is the publication of clearly scandalous matter which serves no legitimate purpose. There would appear to be no reason why the Defendant should be permitted to publish such allegations to the world at large, whether via the Internet or by any other means.

8. The present application for summary judgment is supported, on behalf of all three Claimants, by a witness statement from Philip Sherrell, their solicitor, dated 19 March 2008. He sets out the developments since the interim injunction was granted last November and explains why, against that background, the court is invited to draw the conclusion that there is no realistic prospect of any defence succeeding.

9. The claim form was served together with particulars of claim on 23 January 2008. The defence was filed on 7 February, the Claimants receiving a copy from the court on or about 13 February. This gave rise to some confusion, as it had attached to it a number of documents which did not meet the allegations in the particulars of claim and seemed to be intended as a joke. Those documents consisted of the letter informing the Defendant of my order last November, the order itself, the particulars of claim and defence with the names all changed.

10. What is clear is that no attempt was made to put forward a defence to the claims for infringement of privacy. Accordingly, by a letter dated 18 February of this year, the Defendant was invited to submit to a permanent injunction in the terms of the order sought, but he has not responded. He raised the argument before me in court that the continuation of these proceedings by P and Q constituted an abuse of process, since in that letter of 18 February the solicitor had suggested that it would appear that there was no longer any intention to publish the "novella" or the fictitious sexual allegations mentioned in the letter of 22 November. That is true, but the letter went on to invite the Defendant to confirm that this was so. He declined to do so. In those circumstances, and particularly having regard to the nature of the threat originally made, the Claimants felt obliged to press on and to seek protection in permanent form.

11. This would appear to be a classic case for summary judgment. It is plainly unnecessary and undesirable for this matter to go to trial, as there is no comprehensible issue needing to be resolved. Such infringement of the Defendant's freedom of expression as is involved is necessary and proportionate, having regard to the protection gained by the Claimants. There is nothing to put in the scales in favour of infringing the privacy of P and Q.

12. It emerged, some way into the hearing on 7 May, that the Defendant was not particularly concerned about the grant of an injunction in favour of P and Q. His main concern is to resist any restrictions on his freedom to make comments and criticisms about R. That is a matter which will have to be left over for later determination. In the meantime, however, I am quite satisfied that P and Q are entitled to summary judgment in respect of their claim and that a permanent injunction should be granted in similar terms to that originally obtained on 23 November 2007.