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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
[2018] EWHC 2923 (QB)



No. HQ18M02849

Royal Courts of Justice

Monday, 20 August 2018

Before:

MR JUSTICE NICKLIN

B E T W E E N :

(1) WORKSPACE COMMERCE LIMITED  
(2) WORKSPACE COMMERCE MANAGEMENT LIMITED  
(3) PANAYIOTIS LAWRENCE Claimants

- and -

NICHOLAS FILIS

Defendant

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MR. T. COATES (instructed by Child & Child) appeared on behalf of the Claimants.

MR. G. CALLUS (instructed by Clintons) appeared on behalf of the Defendant.

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**JUDGMENT**

MR JUSTICE NICKLIN:

- 1 Before the court is an application for an injunction to restrain the defendant, Nicholas Filis, from doing various acts which are alleged to amount to defamation, malicious falsehood, breach of confidence, harassment, trespass and interference with business or intimidation. The facts are relatively straightforward albeit in material respects hotly disputed.
- 2 The first claimant is a UK company that carries on business providing office space and network services to individuals and small to medium sized enterprises. The second claimant is a related entity of that company also which is the management company of the Workspace Commerce Group. The third claimant describes himself as the co-founder, Chief Executive Officer, Director and 100 per cent shareholder of the first and second claimants.
- 3 The claimants, but for these purposes in reality the third claimant, who I shall refer to as Mr Lawrence, allege that the defendant, Mr Filis, was a former director and shareholder of the first and second claimants. It is alleged that he resigned his position as a director on 15 May 2018. It is also alleged that Mr Filis transferred all his shareholding in the first and second claimant to Mr Lawrence on 6 December 2016. Having seen the letters of 6 December 2016, they might more often accurately be described as an agreement to transfer the shares on demand, although, as I will come to later, it is the defendant's case that the 6 December letters are not genuine.
- 4 This account of directorships and shareholding is very much disputed by Mr Filis. In his witness statement, he says that he is the sole - and remains the sole - director and shareholder of the first and second claimants. He says that in early May 2018, he spoke to Mr Lawrence on the telephone and that they reached an agreement that Mr Filis would transfer his shareholding to Mr Lawrence. The terms of that agreement are alleged to include the payment of £100,000.
- 5 Mr Filis, however, began to suspect latterly that Mr Lawrence was trying to acquire the company without honouring that agreement. He has relied upon an email from his lawyer, dated 5 March 2018, which he reported instructions that he had received from Mr Lawrence that he should be appointed a director and purporting to direct the transfer of shares into a Gibraltar company.
- 6 Matters reached a stalemate, Mr Filis says, and he states that on or around 30 May 2018, he told Mr Lawrence that he intended to apply to strike the company from the Register of Companies if the arrangement was not honoured. On 5 June 2018, Mr Filis learned through his accountant that he was no longer a shareholder or director in either company. Records from Companies House were apparently obtained, they show that, on 15 May, Mr Filis had executed documents transferring his shareholding and resigning as a director. Mr Filis alleges that he did not execute those documents and that what purports to be his signature is forged or has been added without his consent.
- 7 He makes the point - and to the untrained eye it may appear to have some force - that all of the signatures on these documents are exactly the same. That, of course, does not demonstrate nefarious activity in itself, but it is consistent with Mr Filis' case. He alleges that the letters of 6 December 2016 are also not genuine and the same

signature has been added to those documents

- 8 Mr Filis claims that, on 5 June, in other words the same day he discovered this information, he sent copies of the Companies House document to Mr Lawrence by What's App message saying "You're fucked". That same evening, he posted two comments on the company's Facebook page. The first said this: "You're going down all you fraud fucker". The second: "Do not go near this place Panay Lawrence is a fraudster". That same evening, Mr Filis states, he set up an email account in the name of Petron Reuben. From that he sent two emails on 6 and 7 June to two investors in the company. The first said:

"Workspace Commerce WFC Area Works CEO Director  
Mr Panayiotis Lawrence is under investigation for fraud. If you  
have any dealings with him, please make sure you cancel anything  
you have with him and company".

The second said:

"I hope you receive this email Do Not!! invest in Workspace  
Commerce or WFC N1 or area works as Mr Panayiotis Lawrence  
CEO is under investigation for fraud".

- 9 Mr Filis does not explain in his evidence why he used a pseudonymous email address to send these messages, but he does say that, since sending those two emails, he has sent nothing further and intends not to do so either.
- 10 On 8 June 2018, a letter before action was sent by solicitors acting for Mr Lawrence complaining of the defamatory Facebook postings. There were exchanges of emails between Mr Lawrence and Mr Filis on 24 and 25 June 2018. Mr Filis e-mailed Mr Lawrence on 24 June saying:

"You have until Friday to grow up and take it like a man. We have  
everything in place and are ready to proceed".

Mr Lawrence responded:

"I don't understand your cryptic message. What do you want by  
Friday and what will happen if you do not get it?"

Mr Filis answered: "You don't need to consider anything, let the evidence decide your fate". In his witness statement, Mr Lawrence says he had no idea about what Mr Filis was talking about.

- 11 On 11 July 2018, letters were sent by Mr Filis' accountants to HMRC and the Registrar of Companies. They enclosed a letter signed by Mr Filis on 9 July 2018. He said this:

"I, Nicholas Filis, director and 100 per cent shareholder of  
Workspace Commerce Limited company number 10234350 and  
Workspace Commerce Management Limited company  
number 10234356 have noticed that I have been removed from these  
roles without my knowledge or approval. Mr Panayiotis Lawrence  
and Mr Arif Kitchlew have been appointed to roles within the above

companies. I have not given any authority to anyone to remove me as director or shareholder or to appoint anyone new to these roles. This has been done without my knowledge and I have signed no authority forms or documents in relation to any transfers.

Confirmation statements have also been filed to Companies House without my consent. Accounts for Workspace Commerce Limited have also been filed for the year end 30 June 2017 without my knowledge or signature.

I would appreciate swift action in relation to the above.  
Kind regards Nicholas Filis”.

Signed by him and dated 9 July 2018.

- 12 Mr Lawrence complains that, in early July, Mr Filis intervened to redirect a payment destined for the company to his personal account by representing that he was still a director of the company. That sum has been repaid by the payment services provider Moneycorp.
- 13 Then, on 26 July 2018, Mr Filis attended the company's premises and attempted to gain access. The locks had been changed so he was unsuccessful. Mr Filis is alleged to have demanded keys from the building manager. Keys were not provided and Mr Filis did not gain access to the premises on that occasion.
- 14 The claimant has issued a claim form on 8 August 2018 and identified claims for trespass, defamation and malicious falsehood, unlawful interference in their business, misuse of confidential information and harassment of a third claimant. Draft particulars of claim have been provided for this hearing. Essentially, they advance those claims.
- 15 The claims for defamation and malicious falsehood arise from the Facebook posts and the emails to investors I have identified above. The claim for misuse of confidential information is advanced for the alleged misuse of the client lists to send the two emails. The threats to strike off the company, the letters to the HMRC and the Registrar of Companies and the diversion of the Moneycorp monies are relied upon as unlawful interference.
- 16 The attempt to access the claimant's premises on 26 July 2018 is said to found a claim for an injunction to prevent trespass and finally all of the matters are relied upon as alleged harassment of the third claimant. An injunction is sought to restrain further acts or similar breaches of the torts identified.
- 17 A revised form of order has been provided for the hearing by Mr Coates. The operative part of the injunction seeks an order in the following terms:

“2. Until [4.30 pm on [date] ('the Return Date') or further order of the Court] [or final judgment on this claim] the Respondent must not do any of the following:

2.1. Intrude or trespass upon, or attempt to intrude upon or trespass upon or gain access to, the Premises, whether by making any representation to anyone that he has any rights to

access such premises or otherwise.

2.2. Save for the purposes of pursuing legal proceedings to establish or give effect to a claim that he remains a director of and/or shareholder in the First and/or Second Claimant (including in these proceedings) publish or make, or cause to be published or made, in any manner whatsoever, any statement that any Applicant has at any time committed fraud or is or was at any time under investigation for fraud, or words to the same or similar effect.

2.3. Save for the purposes of pursuing legal proceedings to establish or give effect to a claim that he remains a director of and/or shareholder in the First and/or Second Claimant (including in these proceedings) represent to anyone that he continues to be a director of the First or Second Applicant, or otherwise retains any interest in or position with the First or Second Applicant, whether in order to do any of the following or otherwise:

2.3.1. Procure or attempt to procure that any payment payable to the First or Second Applicants is instead paid to the Respondent;

2.3.2. Procure or attempt to procure that any order for strike off from the Companies Register be made against the First or Second Applicants; or

2.3.3. Interfere or attempt to interfere in any way with the Applicants' business.

2.4. Save through his professional advisers, communicate with or contact or attempt to communicate with or contact the Third Claimant.

2.5. Discuss, disclose or use any of the Information.

2.6. Threaten or attempt to threaten any Applicant with any of the actions prohibited by paragraph 2.1 above in order to procure payment of any monies by any Applicant to him”.

18 Mr Coates accepts that, in respect of any part of the injunction that affects Mr Filis' right of freedom of expression, section 12 of the Human Rights Act 1998 applies. He also accepts that in order to obtain the injunction to prevent publication of defamatory statements, the claimants would have to surmount the obstacle of *Bonnard v Perryman*.

19 Mr Callus, for Mr Filis, contends that all causes of action apart from trespass are caught by section 12 as they all hinge upon Mr Filis' statements regarding the alleged fraud in relation to the execution of the company documents regarding shareholding and directorship. I agree with that submission. Before any injunction could be granted for any of these claims, the claimants would have to demonstrate they are more likely than not to show that at trial they will be successful in showing that further publication of such a statement would not be allowed.

- 20 I will turn to consider each of the causes of action one by one. I will start with the trespass. It is an important aspect of any application for an injunction that there is a viable and credible threat to repeat the alleged unlawful behaviour. Mr Callus has suggested that what has happened so far could be characterised as simply Mr Filis turning up at the office and failing to gain entry. I accept that submission. There is an insufficient basis for the court to conclude that there is any threat to carry out that on another further occasion. As there had not been a trespass thus far, it seems to me there is a very weak basis upon which to invite the court to draw an inference that Mr Filis threatens to do so in the future. Of course, were he to do so, then the court might take a different view, but on the state of the evidence as it stands at the moment, I am not satisfied that a sufficient threat has been demonstrated to justify any injunction on the basis of trespass.
- 21 I will deal next with the injunctions regarding malicious falsehood defamation. Those, as it seems to me, are indeed caught by the ruling in *Bonnard v Perryman*. That may have further implications when I come to consider the harassment claim, but simply looking at the defamation claim, essentially the gravamen of what is complained of by the claimants is the defamatory statement made in the emails that I have identified above which suggests that the third claimant is guilty of fraud or is under investigation for fraud.
- 22 Mr Callus, on behalf of the defendant Mr Filis, makes no bones about the defence to this. He says that it is true. The defendant has put in a witness statement, so it is not a bare assertion of truth; it has been backed up. The evidence clearly is that from the defendant's perspective or in his submission - and it is his case - that the allegation that he has made that the execution of these documents was fraudulent is true and he intends and is able to justify that position. That being the case, *Bonnard v Perryman* would lead the court to refuse an application for an injunction on any basis of defamation or malicious falsehood.
- 23 Mr Coates has made some submissions that it could not be suggested that the first and second claimant were guilty of fraud. That, in my judgment, has taken an over-analytical approach to the effect of a corporate personality. The reality in this instance is that if the defendant is successful in demonstrating his allegations about fraudulent execution of documents are true, then the implications of that will be that they will reflect equally on the first and second claimant because he is the embodiment or personality or representation of those two companies. It is inconceivable that a libel action brought by the first and second claimants could succeed and when we get to the third claimant would fail on the facts of this case. That leads me to conclude that in respect of any claim for an injunction based upon defamation or malicious falsehood that must be refused.
- 24 I come now to the question of harassment. Mr Callus has referred me to a number of passages in *Khan v Khan* [2018] EWHC 241 (QB); a decision of mine of 15 February 2018, which is. What he derives from this authority is the relatively high threshold of seriousness that is required for harassment injunctions. In paragraph 66 of the judgment I quoted from passages Warby J's judgment in *Hourani v Thomson* [2017] EWHC 432 (QB). At paragraph 140, the judge said:

“There must, therefore, be conduct on at least two occasions which is, from an objective standpoint, calculated to cause alarm or distress and oppressive, and unacceptable to such a degree that it would sustain criminal liability: see *Dowson -v- Chief Constable of*

*Northumbria Police* [2010] EWHC 2612 (QB) [142], in the judgment of Mr Justice Simon.”

- 25 Going on in paragraph 141, the judge said:

“The reference to an ‘objective standpoint’ is important, not at least when it comes to cases such as the present, where the complaint is of harassment by publication. In any such case the Court must be alive to the fact that the claim engages Article 10 of the Convention and, as a result, the Court’s duties under ss.2, 3, 6 and 12 of the Human Rights Act 1998. The statute must be interpreted and applied compatibly with the right to freedom of expression, which must be given its due importance. As Mr Justice Tugendhat observed in *Trinny Williams v Associated Newspapers* [2012] EWHC 1296 (QB) at [267]:

‘It would be a serious interference with freedom of expression if those wishing to express their own views could be silenced by, or threatened with, claims for harassment based on subjective claims by individuals that they feel offend or insulted.’”

- 26 Warby J goes on to explain that there is a very important question for the court to consider: whether the conduct crosses “the boundary from the regrettable to the unacceptable” and that is one of the touchstones that is important when considering whether alleged harassment by speech falls on the wrong side of the line and therefore represents harassment.
- 27 In the judgment in *Khan v Khan*, I referred to the decision of Mrs Justice Elisabeth Laing and *Merlin Entertainments LPC and others v Cave* [2014] EWHC 3036 (QB) 40 and 41, where the judge said this:

“40. Harassment can take different forms. Where the harassment which is alleged involves statements which are defendant will seek to justify at trial, there may be cases where an interim injunction will be appropriate. These are cases where such statements are part of the harassment which is relied upon, but where that harassment has additional elements of oppression, persistence or unpleasantness, which are distinct from the content of the statements. An example might be a defendant who pursues an admitted adulterer through the streets for a lengthy period, shouting ‘You are an adulterer’ through a megaphone. The fact that the statement is true, and could [be or] would be justified at trial, would not necessarily prevent the conduct from being harassment, or prevent a court from restraining it at an interlocutory stage ...

41. This means that the real question is whether the conduct complained of has extra elements of oppression, persistence and unpleasantness and therefore crosses the line referred to in the cases. There may be a further question, which is whether the content of the statements can be distinguished from their mode of delivery ...

... the fact that conduct consists of, or includes, the making and

repetition of statements which a defendant will seek to justify at trial means that a court must scrutinise very careful claims that the line has been crossed in any particular case, and ensure that any relief sought, while restraining objectionable conduct, goes no further than is absolutely necessary in interfering with article 10 rights”.

- 28 Those authorities demonstrate very clearly to the care that needs to be taken where an interim injunction is sought ostensibly on the basis of alleged harassment where a defendant, as here, is contending that his statements are true. It is important to ascertain whether the complaint really is about *what* is being said rather than the *manner* in which it is being said. The megaphone example used by Mrs Justice Elisabeth Laing indicates that it is not so much that the fact that the statement is being made, it was the pursuit of the individual and the hectoring of him through a megaphone that added the element of harassment sufficient to justify the court’s intervention, notwithstanding that the statement was going to be defended as true.
- 29 The other principle that clearly comes out from the authorities is that the court needs to be astute to separate out conduct which is unacceptable from that which is oppressive and unreasonable. In his submissions, Mr Coates said on a number of occasions that the defendant does not need to make these statements. That is not the test. It is not a question of whether somebody could perhaps say something differently, or not say anything at all. It is not for another party to dictate how another party will exercise his right to freedom of expression. If the law permits the expression of the statement, it is not an answer to suggest that you can do it in a different way.
- 30 I turn, therefore, to look at the various matters that are alleged to amount to harassment. It seems to me that objectively judged none of the matters reached the required standard of being oppressive and unacceptable to such a degree that it would sustain criminal liability. It may well be that the claimant has been upset by, for example, the Facebook posts and indeed the emails that were sent to investors, but his complaint, I suspect (and would find on the basis of the evidence that I have seen) is more to do with what is being said than the manner of its being said.
- 31 This is not a case where hundreds or thousands of emails are being sent. That element of oppression is not present. Neither is there such a torrent of personal abuse that – beyond the content of the messages - provides the element of oppression to amount to harassment. There is no doubt that the emails and the Facebook posts were written in direct terms, even could be said abusive terms, but they do not, in my judgment, cross the line from unreasonable to being unacceptable and oppressive.
- 32 In relation to turning up at the offices on 26 July, although this is characterised in the evidence of the claimant as being the straw that broke the camel’s back, it is difficult to see how that can be really taken seriously. It was no more than an effort by Mr Filis to attend the offices that was unsuccessful. It is to be remembered that he has not done anything since of a similar nature and although in his witness statement Mr Lawrence does make statements in a general sense that: “Mr Filis has engaged in extremely disruptive and alarming course of behaviour which has been gradually escalating”, and also “Since then, however, his conduct has become even more alarming, he has made threats with a view to extracting money from WFC. He has sent me menacing and cryptic emails. He has even misrepresented himself as a director and shareholder of government bodies and also to a financial company,

Moneycorp, whereby he was able to obtain £15,500 to which he had no entitlement".

- 33 Even if I were prepared to accept all that evidence and conclude that Mr Lawrence has been alarmed by the conduct - and it does not say so in those terms - but even if I make that assumption, I am afraid to say that objectively judged it simply does not cross the threshold of seriousness for an injunction. People are expected to show a degree of reasonable firmness and phlegm in dealing with vicissitudes of daily life which sometimes include dealing with people who are complaining about actions you have taken and actions which you do not approve. I have no doubt that it has been a source of irritation and annoyance, potentially even distress, to find that Mr Filis has been writing to HMRC and Companies House, but standing back from it, what is being said is all on the same theme, which is that Mr Lawrence is alleged by Mr Filis to be behind a false execution of company documents divesting him of a shareholding and of a directorship of a company.
- 34 I do not know where the truth lies in relation to that, but it seems to me that it is in the category identified by Mrs Justice Elisabeth Laing which is it is perfectly plain that this defendant says that he intends to prove those allegations to be true. I cannot make a decision upon that at this stage, but I do not need to. All I need to do is, applying the careful standards that I have identified, assess whether or not, objectively approached, it crosses the line into oppressive and unacceptable conduct to such a degree that it would sustain criminal liability. In my judgment, none of these things, taken individually or cumulatively, does so.
- 35 I turn finally to the question of the injunction based on interference with company's business or intimidation, as it was put in submissions. These seem to me to fall, as I have said already, under the same heading which is matters which were really directed at stopping the defendant from continuing to make statements alleging fraud against the claimant. They are just a different way of characterising what is the same fundamental claim.
- 36 At this stage, the claimant has to demonstrate to me that, at trial, such a claim would have a better than evens chance of success and would lead the court to grant a final injunction preventing publication of that statement. That is inevitably tied up with exactly the same considerations that arise under the harassment claim and also the defamation and malicious falsehood claim. It all turns on whether or not the allegations that are made by the defendant that these documents have been executed wrongly and signatures have been either made or attached to those documents in circumstances where the defendant had nothing to do with them, and they were done with the intention of divesting Mr Filis of his shareholding.
- 37 It seems to me, in those circumstances, highly unlikely that, if a defence of truth is successful in the defamation of claim and the harassment claim failed, the court would nevertheless uphold a claim for interference on business or intimidation when at the same time it is found true the allegations made by the defendant. I find it very difficult to conceive of the circumstances in which a such a claim would succeed. In my judgment, its fate is inexorably linked with that of the defamation claim and the harassment claim and for the same reasons I refuse an injunction on that basis.
- 38 I would add, finally, that it does appear to me, rather like it did in *Khan v Khan*, that essentially the purpose of this injunction application is to try and silence the defendant. It is a way of trying to, in my judgment, escape the consequence of *Bonnard v Perryman*. The principle is that where the nub of the complaint is one of

defamation, the court will not allow the rule in *Bonnard v Perryman* to be circumvented by the use of other causes of action. So even if I had not reached the conclusion that I had on each of the causes of action, I would still have refused the injunction on that basis.

- 39 Finally, I am not at all satisfied that any of the conduct that is relied upon historically has been demonstrated to present a continuing threat sufficient to justify the intervention of the court by the granting of an injunction. The circumstances are that Mr Filis appears to have had a flurry of activity immediately after he discovered, on his case, what has happened. Apart from the turning up at the premises on 26 July, nothing else has really happened that could give rise to any concern. I would therefore have also refused to grant an injunction on the basis of an inadequate demonstration of any real threat to carry out or repeat the conduct that is complained about.
- 40 I do not think I have dealt expressly with the breach of confidence claim, but it seems to me that that suffers exactly the same fate in any event. Primarily, the question is: has there been a misuse of the confidential information? The question would be looked at through section 12, whether or not the use of that information in order to send the two emails that Mr Filis did send would be restrained by a final injunction. In other words, the court would be satisfied at the trial of any claim here that that use should not be allowed. The circumstances in this claim are that Mr Filis has used a limited amount of confidential information, making the assumption that the information is confidential for these purposes. But Mr Filis' case is that alerting those who have an interest in what has taken place in the company - and communicating to them to the allegations that he makes in relation to the alleged fraud – were justified in the public interest.
- 41 In the circumstances, I am not satisfied that the claimant has shown that he is likely to succeed at a trial on the basis that there is a strongly arguable defence here of public interest and even if one were to make the assumption that the information has a sufficient or necessary degree of confidence in order to sustain such a claim. But even if I were wrong about that, I would have refused the injunction on discretionary grounds because of the absence of credible threat of repetition.
- 42 For all those reasons I refuse the application for an injunction.
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**CERTIFICATE**

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This transcript has been approved by the Judge