Neutral Citation Number: [2011] EWHC 476 (QB)

Case No: HQ11D00728

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 March 2011

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

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Between :

ZAM	**Claimant**
- and -	
(1) CFW	
(2) TFW	**Defendants**

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Mr Richard Spearman QC (instructed by **Farrer & Co LLP**) for the **Claimant**
The Defendants did not appear and were not represented

Hearing date: 3 March 2011

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Judgment

Mr Justice Tugendhat:

1. The Claimant is a married man. His wife is one of a number of beneficiaries of some substantial family trusts ("the trusts"). The First Defendant is one of her sisters, and another beneficiary of the trusts. The Second Defendant is the First Defendant's husband.

2. On 25 February 2011 the Claimant applied urgently, without notice to the Defendants, for an interim injunction to restrain the further publication of words which had been published on four occasions identified in a letter before action from the Claimant's solicitors ("Farrers") to the Defendants dated 18 February 2011. Those occasions were (1) two telephone calls to the public relations advisers of the Claimant's employers in late January and early February 2011, (2) a telephone call to the Claimant's employers about a week later, and (3) a letter to one of the brothers of the Claimant's wife and of the First Defendant also about a week later. The letter asked for a number of undertakings to be given by 25 February 2011.

3. Each of those communications was made, or purported to be made, not by the Defendants themselves but instead by an individual who I will refer to as "X". The Claimant's evidence is that he has never met X, and that he does not know whether X is a real person. The Claimant also relied on communications from another person, who I will refer to as "Y". The Claimant's evidence makes it appear likely that, whether X is a real person or a pseudonym for Y or for one or other or both of the

Defendants, all the communications emanating from X and Y upon which the Claimant relies have been sent or made for and on behalf of the Defendants.

4. The Claimant contended that there were compelling reasons why the Defendants should not be notified of the application on 25 February 2011 (see s12(2) of the Human Rights Act 1998), namely that, if notified, the Defendants would be likely to do the very thing which the Claimant was seeking to prevent, before the Claimant could gain access to the Court and obtain an injunction. He also contended that the present case was one of blackmail.

5. In support of those contentions, the Claimant relied, in particular, on various documents.

6. First, an email from Y of 11 November 2008. In that email Y said that, so far as concerns the trusts, he had complete and irrevocable control of all funds relating to the First Defendant and her children. Y also suggested that the Claimant had misappropriated money from the trusts, and demanded the liquidation and payment to Y of part of an investment made by the trusts and compensation for losses said to have resulted from the investment. Those demands appear to explain the motive for the matters complained of in this claim.

7. Second, an email from Y to the senior partner in an offshore law firm dated just over two weeks ago. In that email, Y said that he had asked the Defendants' family to forward letters authorising that lawyer to discuss all of their affairs with Y and to negotiate. The email also stated that "The [Defendants'] family in their letters to you will direct you to channel all communications to me (and for [one of the Defendants' children] to [X]). And they insist that all annoyances/threats/cajoling/theatrics cease". It ended "If we have an understanding on these points, I will entreat [X] to back off his global crusade".

8. Third, the response to the letter before action. This is dated 20 February 2011. It came not from the Defendants (to whom the letter before action had been sent), but instead from X (who, as the Claimant contends, must have got it from the Defendants). This response is headed "CLEARED FOR WORLDWIDE PUBLICATION". It is a defiant and provocative response, which gives no indication of acceding to the demands made in the letter before action. Quite the contrary. For example, with regard to an assertion in the letter before action that "there is no more serious allegation" than one of the allegations previously made by X, it states "May I suggest that you are only saying this because you have not yet heard the rest of the allegations that are coming down the pipeline?"

9. Fourth, when Farrers replied on 21 February 2011, asking for confirmation that X is acting as the Defendants' agent, and that it is the intention of X to "disseminate widely the allegations you have so far set out in the three publications identified in [Farrers'] letter", X responded as follows on 22 February 2011. For one thing, X professed not to know who Farrers were referring to when they gave the first names of the Defendants and their children. For another, X wrote that he had seen Farrers' letter on Facebook and "I don't know how, but it seems to be on the verge of going viral". In addition, X wrote "on the subject of deadlines" that "here is one. February 25th" and then followed that with a threat against the Claimant.

10. Fifth, an email from X to the Claimant's wife dated 22 February 2011. This makes remarks about the Claimant's solicitor and ends "Everyone on the WORLD WIDE WEB is with you".

11. Sixth, an email from X to Julian Pike, a partner in Farrers, dated 24 February 2011. This includes the words "Tomorrow is the BIG DAY. Julian's deadline for unleashing the tremendous powers of the UK legal system" and "will some evil person leak the entire proceedings and all the sordid details so that the irresponsible global media … can really get their teeth into [them]", and which ends "Well, you can see this is shaping up to be quite an extraordinary event. Stay tuned!"

12. The Claimant claimed that the words published are very seriously defamatory of him, and that there is no basis for any of the allegations in question. Among other things, he claimed that he is able to demonstrate by the evidence of independent persons and by documents that one of the allegations, relating to financial impropriety, is without foundation.

13. The Claimant also submitted that this is a clear case of harassment under the Protection from Harassment Act 1997 ("the 1997 Act"). He argued that (1) there is, and without an injunction there will continue to be, a course of conduct which amounts to harassment of the Claimant (see the reference in s7(2) of the 1997 Act to "alarming the person or causing the person distress" and the provision in s 7(3) that a "course of conduct" must involve conduct on at least two occasions), (2) the victim can apply for an injunction under ss1 (1A) and 3A of the 1997 Act, and (3) the Defendants could not show any of the grounds set out in s1(3) of the 1997 Act, in particular because their conduct is the reverse of reasonable.

14. On 25 February 2011, I granted an injunction for a short period until an early Return Date of 3 March 2011. On that occasion, the matter came back before me, and I granted an injunction until trial or further Order in the meantime. Both those hearings were in private. In addition, the Order that I made on both occasions included other derogations from the principle of open justice, including orders that all parties should be anonymised. In accordance with my usual practice, I stated that I would give my reasons in writing later, and in the form of a judgment which could be made public. These are they.

15. The material which was before me on 25 February 2011 consisted of 6 witness statements with substantial confidential exhibits and a detailed Skeleton Argument from Mr Spearman QC. These documents were served at an address which I am satisfied, on the evidence before me, is the current home address of the Defendants. They were served on the evening of that day, together with the Order that I made on that day and a covering letter from Farrers which advised that there would be a further hearing on 3 March 2011. The door was answered to the trainee from Farrers who effected service by a man who the trainee has been able to identify (from a Facebook photograph) as being the Second Defendant. That man declined to accept delivery of the papers, which were then posted through the letterbox by the trainee. These documents have also been notified to the Defendants by being sent to what I am likewise satisfied are their email addresses, although initially an incorrect address was used, in error, for the First Defendant.

16. The Claim Form, Application Notice for 3 March 2011, and other documents such as the Note of the hearing on 25 February 2011 have also been served on the Defendants, as described in the first and second witness statements of Mr Michael Colin Patrick, a solicitor at Farrers, and in a witness statement of the process server who attended what I am satisfied is the Defendants' home address on the evening of 1 March 2011. This is an application on notice, for which notice has been given in accordance with the CPR.

17. The words complained of consist of allegations of the most grave and serious kind, which, if true, would involve various forms of criminality. Mr Spearman submitted that, as is virtually self-evident, publication of the material in question would cause alarm and distress to the Claimant. He also submitted that it is apparent, from the words of X himself, that, through his agency, the Defendants have both understood and intended throughout that publication would cause alarm and distress to the Claimant. I accept those submissions.

18. The Defendants personally have not sought to justify or otherwise defend the publication of those words (or the actions about which the Claimant complains) in any way.

19. However, on 2 March 2011 the Court received a fax which takes the form of a statement signed by X. That fax raises a number of issues. Perhaps most importantly, it asserts that the Claimant is the "the subject of a variety of legal activities" in a foreign country in respect of an alleged incident of serious misconduct in that country. However, no details are given of when or where that incident took place, as to the identity of any other person allegedly involved in it, or as to the alleged "legal activities". The fax also alleges that much of the Claimant's evidence may have been manufactured by his "family and relatives … who have been desperately trying to stifle growing criticism" of his financial dealings with assets of the trusts. Other points made in the fax include that the present proceedings are a waste of the Court's time and an unwarranted and excessive stifling of the basic and civil human rights of other people; that this country is not the proper venue for these proceedings; that the email addresses used for the Defendants are not their true email addresses; that the address at which service has been effected on the Defendants is not their residence; and that there has been no personal service on the Defendants because they are abroad. At least one basis upon which this statement is sought to be put before the Court appears to be that my Order of 25 February 2011 has been served on the writer, and that the writer is accordingly entitled to apply to vary or discharge it at least so far as it affects the writer.

20. The Claimant states that the words complained of are completely untrue. In support of his contention that the words complained of are entirely false, he has not only filed and served a detailed witness statement with Confidential Exhibit which he himself has made but he has also filed and served detailed witness statements with Confidential Exhibits from (a) one of the other beneficiaries of the trusts, who (among other things) has had substantial involvement with representing the interests of the beneficiaries to the trustees, (b) the senior partner of the offshore law firm referred to above, who has been a trustee for the last 10 years of the relevant family trusts, and who considers the Claimant to be "a man of absolute integrity", (c) an investment adviser to the trusts, who details, by reference to supporting documents, what has become of the material investments, and (d) an officer of the corporate trustee of the

relevant trusts, who states (among other things) that it is "inconceivable" that the trusts have been "raped" or that there has been any "on-going criminal enterprise" or "back-door dealings" as has been alleged by X.

21. As I have said, a letter of claim was sent on behalf of the Claimant on 18 February 2011. It is to be noted that the responses – none of them from the Defendants – do not give any indication that they are relying on any defence whether of justification or at all.

22. The fax of 2 March 2011 which was sent to the Court is devoid of the sort of detail which would be required before the Court could treat it as giving rise to a sufficient basis upon which a defence could credibly be advanced to the highly defamatory publications complained of, whether on the basis of justification or on any other basis. In any event, the bare assertions made in that fax have to be considered in context. This includes the fact that the fax contains assertions about the efficacy of service on, and notification to, the Defendants of these proceedings which there are strong grounds for believing to be self-serving and untrue.

23. It is well known that it is rare for the court to grant injunctions on interim applications in defamation actions. However, the court has jurisdiction to do so and will do so in an appropriate case.

24. On the information before me I am satisfied that there is a prima facie case of libel, that there remains a threat by the Defendants to publish or further publish the words complained of, and that if publication or further publication occurs the Claimant will suffer injury which cannot fully be compensated in damages. I am in no doubt that the words complained of are defamatory. Nothing has been stated by the Defendants personally to the effect that they have a defence of justification or any other defence. Nor am I able to regard the fax of 2 March 2011 as providing any or any sufficient basis for saying that there may be a defence that will succeed at trial (see *Bonnard v Perryman* [1891] 2 Ch 269 and *Greene v Associated Newspapers Ltd* [2005] QB 972 per Brooke LJ at [57]).

25. In any event, I consider that the Claimant has a clear basis for relief in reliance on the provisions of the 1997 Act. It is apparent from *Thomas v News Group Newspaper Ltd* [2002] EMLR 78 that, in principle, publications are capable of constituting harassment. In *Howlett v Holding* [2006] EWHC 41, Eady J said at [5] "in some circumstances, the exercise of one's right of free speech can fall within the concept of harassment, provided the other necessary ingredients are present. For example, it would have to be classified as unreasonable and oppressive conduct". In my judgment, there are strong grounds for saying that this is such a case.

26. The Claimant is likely to establish that the publication complained of should not be allowed.

27. Turning to derogations from open justice, it would frustrate the purpose of the injunctions sought if the Claimant's applications had the effect of making public the very allegations in respect of which he is seeking relief by way of injunction. The Court has jurisdiction to make an Order for anonymity in accordance with s6 of the Human Rights Act 1998 and CPR 39.2(4). In a case like the present, where there is a strong case for believing there to be an attempt at blackmail, such Orders are

frequently made in respect of both parties. There are strong policy reasons to discourage such conduct, which would be undermined if anonymity was refused. See *DFT v TFD* [2010] EWHC 2335 (QB); *AMM v HXW* [2010] EWHC 2457 (QB); *KJH v HGF* [2010] EWHC 3064 (QB).

28. It was also submitted by Mr Spearman that if anonymity were not to be ordered, the fact that the Claimant has had to seek relief would be capable of being made a story in its own right, and would be likely to lead to widespread speculation as to what story he has been concerned to prevent the Defendants from telling. It would be unfair to him (and his family) that, as the price of preventing the publication of allegations that (*ex hypothesi*) he is entitled to prevent, he (and his family) should be exposed to invasive speculation of this sort. In this particular case, the public interest in open justice is better served by granting anonymity to the Claimant and revealing such detail about the subject matter of the action as is contained in this public judgment. See *JIH v News Group Newspapers Ltd* [2011] EWCA Civ 42.

29. The Defendants had an opportunity to appear and make representations to the court today. They did not do so. Nevertheless nothing in this judgment is to be taken as a finding of fact against them. I have made an order prohibiting publication or further publication of words complained of, or any other similar words defamatory of the Claimant. This judgment is to be read subject to any findings of fact that may be made at any trial. It is further subject to a provision I have made granting permission to the Defendants to apply to vary or discharge this order. I also made an order that the Defendants should pay the Claimant his costs of and occasioned by these applications, which, in light of the circumstances set out above, I assessed summarily in the full amount of the schedule of costs submitted by Farrers.