Neutral Citation Number: [2020] EWHC 1917 (QB)

Case No: QB-2020-001303

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/07/2020

Before :

HIS HONOUR JUDGE LEWIS
(sitting as a Judge of the High Court)

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Between :

MR STANISLAV IVANCHEV	**Claimant**
- and -	
MR MICHELE VELLI	**Defendant**

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Jake Rudman, Counsel (instructed by **direct access**) for the Claimant
Mike L Neri, the Defendant, **in person**

Hearing dates: 24 June 2020

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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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HIS HONOUR JUDGE LEWIS

His Honour Judge Lewis:

1. The Claimant has issued proceedings for libel, harassment, misuse of private information and breach of data protection rights. He seeks damages up to £30,000, an injunction, costs and an order pursuant to s.12 Defamation Act 2013 that the Defendant publish a summary of the court's judgment.

2. The Claimant today seeks judgment in default of an acknowledgement of service and a final injunction pursuant to CPR rules 12.3(1) and 12.4(2).

3. The proceedings have been issued against a Michele Velli, described in the heading to the claim as also being known as Mike Velli and Mikel Velli, and as being the operator of a named email account. In fact, the operator of the email account - and author of the words complained of – is Mike L Neri.

4. The Defendant says he has not been served with proceedings. He also says that he only found out about them days before the hearing of this application, when an order was emailed to him by the court. He seeks to defend the claim.

5. The parties live in the same residential development, which comprises a series of modern buildings and some communal outdoor spaces. The buildings share a residents' car park in the basement. The building in which the Defendant lives has at least 16 floors and must contain well over 100 apartments. There is a secure mailbox for each apartment in an area on the ground floor.

6. The residential estate's shift manager and residential services manager use generic email accounts, rather than ones in the name of an individual. I will refer to these accounts as "the Shift Manager" and "the Services Manager".

Chronology

7. On 9 March 2020, the Claimant damaged the Defendant's car, clipping it whilst trying to park ("the Incident"). The Claimant reported this straightaway to estate management. The Defendant says the car, a Rolls Royce, is owned by his partner although he also drives it. For convenience, I will refer to it simply as the Defendant's car.

8. On 10 March, an email was sent from the Shift Manager to the Defendant about the Incident. The email was addressed to Mike and provided him with the Claimant's email address. Later that day, the Defendant emailed his partner, the Shift Manager, the Services Manager and the Claimant asking for photos and stating that he hoped this was all a joke.

9. On 11 March, the Defendant emailed the Claimant to ask what had happened, giving his name as Mike. The email was also sent to the Shift Manager and the Services Manager.

10. The Claimant replied to the Defendant the same day, addressing him as Mike. He offered to pay for the repair if the Defendant used a company known to the Claimant, but placed the blame for the accident on the Defendant for having

parked inconsiderately. He signed the email Stan. At this stage, neither party knew where the other lived, nor the other person's surname.

11. Later that day, the Defendant replied. This is the first email complained of. The email was copied to the Shift Manager and the Services Manager. The Defendant was incredulous that the Claimant had written in the terms that he had and referred to an alleged incident earlier on 9 March involving the two men, ("the Earlier Incident"). He said that he wanted the repairs dealt with through insurers and asked the Claimant about payment of the excess. He also said things that the Claimant considers to be defamatory.

12. The Defendant then sent a further email to the same recipients. This is the second email complained of. The Defendant made an official complaint to the building management about the Earlier Incident and requested CCTV footage.

13. On 12 March, the Defendant emailed the Shift Manager and the Services Manager asking for information about the Claimant and his car, for his insurance claim. He also asked for the camera footage. The same day, the Defendant emailed them again, this time including the Claimant, requesting basic details about the Claimant – name, licence details, contact information - so he could move matters on.

14. On Friday 13 March, the Claimant's lawyer sent an email to the Defendant, addressed as Mike Velli, with a letter of claim seeking an apology, an undertaking, substantial damages and costs. The letter ends: "If you would like correspondence by post in future please provide your or your lawyers' address for that purpose". The Claimant required a response within two working days, by 17 March. The pandemic lockdown started on 23 March.

15. On 26 March, the Claimant's lawyer emailed the Defendant to chase for a response. He explained that if the Defendant did not respond, proceedings would be issued. He concluded as follows: "Please confirm that you are happy to accept service of proceedings by email, or alternatively provide an address for either you or your solicitors at which legal documents should be served. If you do not respond my client will have no choice but to apply for alternative service and recover costs of the same from you".

16. Later that day the Defendant emailed the Claimant's lawyer. He said that he had replied twice to the letter of claim. He confirmed that he had reported the Incident to his insurer and had requested CCTV footage in respect of the Earlier Incident. He said: "There's nothing else I can add". The Defendant had not, in fact, provided a substantive response to the legal claim, and the replies he had sent were short emails about the incidents.

17. On 27 March, the Defendant sent an email to the Claimant, his lawyer, the Services Manager and the Shift Manager, chasing the CCTV footage. He asked everyone to stop emailing him unless it was to do with the car being fixed. He received a reply the same day from the Services Manager confirming that footage of two incidents had been identified.

18. The same day, the Claimant's lawyer emailed the Defendant asking for an address for service or confirmation that he will accept email: "if you refuse to provide an address for service my client will simply apply to court for alternative service under CPR 6.15. You will be responsible for paying the costs of that application once my client's claim against you succeeds. I kindly request that you save yourself the cost and my client the time of such an application by simply confirming you will accept service by email".

19. Between 27 March and 31 March there was some correspondence between the Claimant's lawyer and a firm of solicitors retained by the Defendant, but they were not instructed to accept service of proceedings.

20. On 1 April, a tracing agent sent an email to the Claimant stating that a "Mikel Velli" can be contacted at Flat 1607, giving a full address and postcode. The agent did not say where this information had come from and said the name might be "Michele Velli". I am told that on receipt of this information the Claimant decided not to apply for alternative service. Personal service was not an option, given the lockdown.

21. On 2 April, the Claimant's lawyer chased the Defendant for a response and confirmed that proceedings would be issued the next day. Later that day, the Defendant replied, accusing the lawyer of harassing him. The email ended: "And do what you need to do".

22. There were no further emails exchanged by the parties until 18 June.

23. Proceedings were issued on 6 April. On 8 April, a process server attended at the Defendant's building. He rang the intercom for No 1607 and a man answered. This man said he was not Mr Velli and that Mr Velli was not there. The security guards allowed the process server into the foyer of the building to access the mailbox for No 1607. He posted the claim documents into the letterbox for No 1607. The process server says that the Defendant's car was parked outside the building, and it was his belief that a Mr Velli was inside the building and "avoiding service". The Defendant says he always parks the car outside the building, and only uses the car park when going away.

24. On 27 April, the Claimant issued an N244 application seeking default judgment. Nearly a month later, on 22 May 2020, a process server attended at the Defendant's building. He has produced a witness statement:

    i) He called the intercom for No 1607 and spoke with a Dr Newman who explained that he had lived at the property for almost one month and the former (unnamed) owner had moved. He did not know where they had moved to.

    ii) He went to a building 25-feet away from the Defendant's building. He says that he spoke to a security guard and explained that he was there to serve documents on "Michele Velli (AKA Mike Velli) (AKA Mikel Velli)." but that he had been told that he no longer lives in No 1607.

iii) He says that the security guard confirmed it was correct that he had moved. He was shown the court documents and then said that he was "aware of the accident/crash that took place between Michele Velli (AKA Mike Velli) (AKA Mikel Velli) and Stanislav Ivanchev. He confirmed that defendant does not live in flat 1607 but still resides in [the building] under a different flat number which he was unwilling to share with me".

iv) The security officer then got his manager, Mr Wade. The process server says: "he also confirmed that (a) he knows the defendant and (b) that he does not live in flat 1607 but still resides in [the building] under a different flat number". He was not prepared to disclose the address.

v) He says that Mr Wade said he was "willing to serve the document on my behalf and make sure that Michele Velli (AKA Mike Velli) (AKA Mikel Velli) receives the document.". The process server then says "unfortunately, I could not see what the flat number he posted the documents to… I waited outside and saw he had served the documentation to the defendant at 14.47". I understand this to be saying that the process server saw the guard post the documents into a mailbox, but did not see which one.

25. A certificate of service has been filed. It says that as well as serving the N244 and evidence in support, the process server also served the claim form and particulars of claim. It gives the building name as the address for service, but does not include a flat or mailbox number.

26. On 18 June, the court emailed the parties an order of Nicklin J giving directions for this hearing. The same day, at 2042, the Defendant wrote to the court asking what the order was about and stating that he had not seen anything yet to defend.

27. The Defendant explained during the hearing that this was when he started taking this matter seriously. Until then, he says he had sent "off the cuff responses". He said there was so much happening in his life at the time – the pandemic, losing his job, Black Lives Matter and providing for his young family – that he really was unable to focus on what he considered to be an over-reaction by the Claimant to his earlier emails.

28. On Friday 19 June, the Claimant's lawyer wrote to the Defendant explaining what steps had been taken to serve the court documents, attaching copies. In response, the Defendant asked for confirmation of the address used. That evening, the Defendant emailed the Claimant's lawyer confirming that his name is not Mr Velli and that he has never lived at No 1607. He said that he had not received any papers.

29. On Saturday 20 June, the Claimant's lawyer wrote to the Defendant recommending that he obtained legal advice and asking for details of his name and address and any evidence on which he relies. He also asked for confirmation whether he would accept service by email.

30. On Tuesday 23 June 2020, the Defendant produced two witness statements. In these he confirmed that:

    i) His name is Mike L Neri. He does not recognise any of the three names used by the Claimant to refer to him.

    ii) He has lived in the development for four years. Between 2016 and 2017, he was in the Claimant's building. Between 2017 and 2019 he rented No 902 in his current building. The landlord then wished to move back and so he relocated to No 406 in November 2019, which is on the fourth floor. He has never lived at No 1607.

    iii) He exhibited his tenancy agreements and two documents confirming his address: a bank statement that must have been issued at the start of May 2020 for No 406; and an invoice dated 8.10.19 for the deposit and rent advance when he moved from No 902 to No 406, showing both addresses.

    iv) He confirmed that he had been expecting to be notified of proceedings by email. He wants to file a defence. He says that his words have been taken out of context and blown out of proportion, and the Claimant has been caused no harm nor damage.

Apartment No 1607

31. During the hearing, the Claimant painted an extremely negative view of the Defendant. Whilst I can understand why the Claimant might feel extremely aggrieved by the insulting and dismissive way in which the Defendant has responded to this claim, there does not appear to be any evidential basis for the wider attack on the Defendant's honesty. By way of example:

    i) It was said during the hearing that the court should not accept what the Claimant says about his identity, despite him having produced various documents. During a break in the hearing, the Defendant scanned and provided copies of his driving licence and his passport.

    ii) It was said that the documentary evidence provided by the Defendant to show where he was living was insufficient and for the wrong dates. Again, during a break the Defendant scanned and emailed his bank statement for the month before, issued early April 2020, showing No 406, and an electricity bill dated 5 May for the same address. If there had been more time, I have no doubt the Defendant would have provided further materials.

    iii) It was said that the Defendant was using deliberately vague language to obscure his connection with No 1607. I was told at one point that the Claimant believes the Defendant owns the property, which would be easy to prove if true. During the hearing, the Defendant confirmed in unambiguous terms that he has never even been on the sixteenth floor,

and has no connection whatsoever with No 1607, and nor has his partner. Nevertheless, the Claimant still considers that there is a "good arguable case that the Defendant had been living at 1607".

iv) It was said that the Claimant believes that the Defendant is financially involved in numerous flats in the building, that he is being untruthful about being unable to pay rent and is using different addresses to avoid this litigation. I was invited on behalf of the Claimant to find the Defendant is resident at more than one address.

32. I am satisfied that the Defendant has resided in the properties in which he says he has resided, on the dates set out above.

33. The Claimant has produced a single email from a company giving two incorrect names for the Defendant, and an address. The email was silent on the source of the information. Beyond that, the Claimant has produced no evidence that the Defendant used to live in flat No 1607. There are accounts by the second process server about things said by the security guards. Given the words used, it seems unlikely that these are verbatim accounts. Neither account is sufficiently clear for me to be satisfied that the security guards were confirming that the Defendant had ever lived in No 1607.

34. The Defendant on the other hand has been able to explain his housing situation and produce documents to support what he is saying. As noted above, the Defendant was even able to provide additional documents during a break in the hearing to answer concerns raised by the Claimant.

35. In terms of the wider allegations made during the hearing, as noted above there does not appear to be any real evidential basis for them. I do not accept that this is a case in which the Defendant has consciously sought to evade service, although I accept he has not made things easy. Before proceedings were issued, the Claimant's lawyer had quite properly explained to the Defendant that if he chose not to provide an address, they would apply for permission to serve by email. The Defendant appears to have relied on this. He has always replied to emails, albeit often not addressing points raised. He responded on the same day that he discovered that there were court proceedings, and took time to prepare statements. Against this background, whilst the Defendant can be criticised for not taking the case seriously, and forcing the Claimant to incur unnecessary costs, the evidence as it stands does not suggest he has been dishonest as the Claimant suggests.

Law

36. The relevant procedural position is as follows:

i) CPR rule 6.6(2) provides that a Claim Form must include an address at which a defendant may be served. That address must include a full postcode, unless the court orders otherwise.

ii) To serve the claim form, the claimant must complete the step required by CPR rule 7.5, which for "delivery of the document to or leaving it at the relevant place" is "delivering to or leaving the document at the relevant place".

iii) CPR rule 6.9(2) defines the place at which the claim form must be served on the defendant, which for service on an individual is "usual or last known residence":

a) Whether the place is the 'usual' or 'last known' residence, what the serving party must establish is that there was a good, arguable case that the address served was the usual or the last known residence of the defendant: "That is a lower test than proof "on a balance of probabilities" but, because the issue is determined, effectively finally, at the interlocutory stage, a "good arguable case" requires the claimant to establish that it has a much better argument on the available material than the defendant", ***Relfo Limited (In Liquidation) v Bhimji Velji Jadva Varsani*** **[2009] EWHC 2297 (Ch)** per Jules Sher QC sitting as a Deputy High Court Judge.

b) When considering the state of mind of the server in a case where service is on the "last known residence", knowledge in this context refers to the serving party's actual knowledge or what might be called his constructive knowledge, ie knowledge which he could have acquired exercising reasonable diligence, ***Marshall Rankine & another v Maggs*** **[2006] EWCA Civ 20,** per Dyson LJ.

iv) If, however, a claimant has reason to believe that the usual or last known address is one at which the defendant no longer resides, the claimant must take reasonable steps to ascertain the address of the defendant's current residence (CPR rule 6.9(3)) and, if he or she does so, must serve at that address (CPR rule 6.9(4)(a)).

v) Where, having taken such reasonable steps, the claimant is unable to ascertain the defendant's current address, the claimant must consider whether there is an alternative place where; or an alternative method by which, service may be effected (CPR rule 6.9(4)). Where there is such a place, the claimant must make an application under CPR rule 6.15 (CPR rule 6.9(5). Otherwise, the claimant may serve on the defendant's usual or last known address (CPR rule 6.9(6)).

37. The Claimant broadly accepts this position, relying on the ***Relfo*** decision, and its application in ***National Westminster Bank v De Kment*** **[2016] EWHC 3875 (Comm)** at [8] and [9]. The Claimant says, however, that the approach identified above applies equally to the situation where a defendant has never resided at a property, providing the claimant has taken sufficient, diligent steps to be satisfied that it is the usual or last known residence.

38. I do not accept this position given the clear decision of the Court of Appeal in ***Marshall Rankine*** *(supra)*. The court considered whether it is possible for a person's "usual or last known residence" to be a property at which they have never, in fact, lived. The court was clear that the words used in what was then CPR rule 6.5(6) require that the defendant should have lived at that address at some time. The words used in the old rule are not materially different to the current CPR rules 6.9(1) and (2). The court dismissed the argument that it was sufficient that a claimant had taken such reasonable steps to ascertain the last known address, or that an address may qualify as a defendant's last known address if it is honestly believed to be such, even if that is not in fact the case. The court said: "no authority has been cited to us in support of the proposition that a piece of information which is false can nevertheless be known."

39. A similar approach was taken in ***Relfo***, where the judge recognised that the question of whether somewhere is a "usual or last known residence" does not even arise in respect of a property that is not the defendant's residence at all.

The first attempt at service

40. On the first attempt in April 2020, documents were served at No 1607. This is not a property at which the Defendant has resided. It follows, given the decision in ***Marshall Rankine***, that this cannot have been effective service, whatever the belief of the Claimant.

The second attempt at service

41. On the second attempt in June 2020, the Claimant's agent was informed that the Defendant did not live at No 1607 and so he did not leave the documents at that place of residence.

42. If there had been evidence produced that the documents had been left at No 406, by posting them into No 406's mailbox, I would have been satisfied that there had been good service on the Defendant on the basis that No 406 was his usual residence at that time.

43. The problem here is that the Claimant does not know the address for the apartment that was served. The process server's evidence of what he saw in terms of posting is vague. He could not see the letterbox number, nor give any indication of the approximate location of the letterbox.

44. What constitutes good service for a multiple occupancy building will often be fact-sensitive. In this case, it seems material to me that this was a large building comprising many autonomous residential units, each with its own secure and clearly labelled mailbox, and a separate postal address. It is also material that the documents in question were not addressed correctly, either in terms of the name of the recipient or his address. The Defendant points out that the Certificate of Service even used the wrong postcode for his apartment. Taken at its highest, the evidence shows that the documents were served on one of the properties in the Defendant's building, but not that this was the

defendant's residence. The Claimant has not established that the claim form was served on the Defendant at his usual residence.

45. I have, however, also considered the question of reasonable steps, in case it could be said that the provisions of CPR rule 6.9(3) apply. In this case, by the June attempt, the Claimant had reason to believe that the Defendant was not living at No 1607. He was, therefore, under a duty to take reasonable steps to ascertain where he was living. Speaking with the security guard would be one such step, but this did not result in the Claimant ascertaining the Defendant's current address, as required by rule 6.9(4)(a). As a minimum, I would have expected a Claimant taking reasonable steps to have emailed the Defendant again, setting out what was known about his address and asking him to confirm the position. If he refused, then I would have expected the Claimant to have made an application pursuant to rule 6.15, as the Claimant said would happen more than once, and as required by CPR rule 6.9(5).

46. I am satisfied that the Claim Form and Particulars of Claim have not been served. It follows that the Claimant's application for default judgment is dismissed.

Other matters

47. The Defendant is now aware of these proceedings. I have considered whether to make an order dispensing with the need for service but have decided not to do so, for two reasons.

48. Firstly, the Claimant needs to decide whether he wishes to substitute the correct name of the Defendant for the incorrect ones used in the Claim Form. He was not prepared to provide this confirmation during the hearing because the information had only just come to light. He does not need the court's permission to amend if this happens before the claim form has been served.

49. Secondly, I have been careful in this judgment not to say anything about the merits of the case. The Claimant must now decide whether he wishes to pursue his claims by serving the Claim Form. Before he does so, it would be helpful for both parties to stop and reflect on the issues between them, to see whether there is a way of avoiding costly and time-consuming litigation. To allow time for discussions, pursuant to CPR 3.1(2)(a) I will grant a one-month extension of time for serving the claim form to 22 September 2020.

50. To avoid problems with service in the future, I give permission pursuant to CPR Part 6.15 for the Claim Form and Particulars of Claim in this case to be served by email at the address that has been used throughout by the Defendant.