



Neutral Citation Number: [2021] EWHC 1854 (QB)

Case No: QB-2021-002476

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/07/2021

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

Between :

GUH

Claimant

- and -

KYT

Defendant

Mr Adam Wolanski QC (instructed by Brett Wilson LLP) for the Claimant
The Defendant did not appear and was not represented

Hearing date: 1st July 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website.

The date and time for hand-down is deemed to be 3pm on 5th July 2021

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Mrs Justice Collins Rice:

Introduction

1. This is the return date ordered by Jacobs J on 24th June, following the grant of the Claimant's application for an injunction restraining the Defendant from attempting to contact him and from disclosing certain dealings between the parties. The judge also directed a number of privacy measures on that occasion, including the anonymisation of the parties to these proceedings and the imposition of reporting restrictions.
2. Since that date, the Claimant has issued a claim against the Defendant, seeking permanent injunctive relief to prevent the misuse of private information and harassment within the terms of sections 1 and 3 of the Protection from Harassment Act 1997. The claim is made with reference to a course of conduct said to have been carried out by the Defendant between March 2021 and June 2021, including threats to communicate or publish private or confidential information and persistent unwanted contact.
3. The Claimant now seeks continuing injunctive and privacy measures pending determination of this claim.

Outline Factual Background to the Claim

4. The Claimant is a private individual with no public profile. He had limited original dealings with the Defendant. They were of a sexual nature, conducted and paid for on the Claimant's understanding that the Defendant was a sex worker.
5. The Claimant has served a witness statement in which he sets out a subsequent course of conduct by the Defendant towards him, comprising persistent contact, of a nature amounting to threats to disclose their dealings to his family, which he understood could be managed only by the repeated payment of substantial amounts of money to persuade her not to do that. In short, it is his case that he is being blackmailed and that his private and family life is being subjected to unwarranted threat.
6. He brings these proceedings to restrain the Defendant's behaviour and assert a right, protected by the ECHR, to autonomous control of his private information.

Proceeding in the absence of the Defendant

7. At the return date hearing before me on 1st July 2021, the Defendant did not appear and was not represented. The Claimant reminded me of my discretion (Civil Procedure Rule 23.11) to proceed to determine his applications in the Defendant's absence.
8. In considering the exercise of that discretion, I had to bear in mind that the application before me was one for relief which, if granted, might affect the exercise of the Convention right to freedom of expression. As such, section 12(2) of the Human

Rights Act 1998 makes specific provision for cases in which the person against whom relief is sought is neither present nor represented. In such cases, the relief is not to be granted unless the court is satisfied that the applicant has taken all practicable steps to notify the respondent (or that there are compelling reasons why the respondent should not be notified).

9. I have also directed myself to *Bourne v Nejad* [2019] EWHC 1366 (Ch) and to *Pirtek (UK) Limited v Robert Jackson* [2017] EWHC 2834 (QB). Warby J noted in the latter case that the exercise of discretion to proceed in the absence of a defendant must of course be exercised compatibly with the overriding principle of justice, and in cases to which s.12(2) applies a two-stage approach is indicated. First: consider whether a defendant has received proper notice of the hearing and the matters to be considered at the hearing; second: if so, consider whether the available evidence as to the reasons for her non-appearance supply a reason for adjourning the hearing.
10. Where a court does make an order at a hearing in the absence of a defendant, CPR 23.11(2) provides that a court may subsequently relist the application, of its own motion or on an application. Warby J in *Pirtek*, having exercised his discretion to proceed in the absence of an unrepresented respondent, decided to hand down written judgment and direct the claimant to serve a copy on the respondent along with the resulting order, so that the respondent would know the reasons for it without delay and be able, if he had any basis or reason for doing so, to avail himself of this additional safeguard.
11. I have before me a witness statement from the Claimant's solicitors setting out the steps they have taken to put the Defendant on notice of today's hearing, and to serve her with all the necessary documentation in this case, by WhatsApp as provided for in the order of Jacobs J.
12. I am satisfied, on this evidence, that the Defendant has been properly served with the Claimant's claim form. I am also satisfied that she has been properly served with details of the applications before me today, and has been given due notice of today's hearing. I accept the evidence of the Claimant's solicitors, particularising communications between them and the Defendant, during this past week, by WhatsApp and by telephone. The evidence suggests that the Defendant has responded promptly when contact has been made with her, but that she is unwilling to engage actively with these proceedings, has been unresponsive to attempts to encourage her to do so in her own interests, and has taken active steps to discourage communication with her about these proceedings. In all of these circumstances I accept that the Claimant has done all that is necessary and practicable, and that the Defendant has been kept fully informed.
13. There is nothing before me, by way of evidence or otherwise, to suggest that I ought to adjourn the hearing or that it would be unfair to proceed in the Defendant's absence. She has not indicated any reason for failure to attend. She has not asked for an adjournment. She does not appear to have engaged with these proceedings meaningfully at all.
14. In all of these circumstances, I considered it just and convenient to proceed in her absence. I indicated at the hearing that, for the same reasons as were given by Warby J in *Pirtek*, I would hand down a written judgment and direct the Claimant to serve a

copy of it, together with the resulting Orders, on the Defendant. If there are relevant matters not before me, and a reason why they are not before me, the Defendant will thereby be in an informed position to consider taking urgent legal advice.

Privacy Measures

15. The parties in this case have been anonymised and reporting restrictions imposed prohibiting the identification of the Claimant, directly or indirectly, in any report of these proceedings.
16. Although it is not necessary for me to consider the issue of anonymisation afresh, I record that I am satisfied that the continuing anonymisation of the parties is necessary in this case. I also agree with the Claimant's application to continue reporting restrictions on identifying him in connection with these proceedings. The Claimant's claim relating to the misuse of private information would be wholly undermined before it could be properly determined, if his name were associated with these proceedings. Serious allegations are made about the Defendant, and such steps as she may wish to take, having been absent from today's proceedings, to protect her position, should not be jeopardised by premature revelation of her part in the matters alleged.
17. I have not, however, considered it necessary to conduct the return date hearing in private, nor to impose a general restriction on the reporting of the hearing. That has been on the basis that the Claimant's evidence, setting out the information he seeks to protect, which I read in advance of the hearing, was referred to in its written form only and not rehearsed orally in court, and that access to that part of the court record should also be suitably restricted. Those are in my view necessary measures to continue to preserve the privacy of that information pending determination of the claim, and thereby to keep the claim alive.
18. This judgment is drafted on a similar basis.

Injunction

19. This is an application for interim relief which, if granted, might affect the Convention right to freedom of expression: both by restraining the Defendant and by generally prohibiting the identification of the parties. By section 12(3) of the Human Rights Act, such relief may not be granted unless the court is satisfied that the Claimant is likely to establish at trial that publication should not be allowed.
20. To succeed at trial on the claim of misuse of private information, the Claimant must establish that his Article 8 ECHR right to privacy is engaged, and that the effects on him of breaching that right are disproportionately serious to any countervailing right that may be asserted to do so. On the evidence before me, I am satisfied that the Claimant is likely to establish that his asserted entitlement to autonomous control of information about his sexual life is squarely within the established scope of Art.8, and that he had a reasonable expectation of privacy as regards his sexual dealings with the

Defendant; that he is likely to be able to prove that disclosure would have a serious impact on his personal wellbeing and destructive effect on his family life; and that, in any event, he is entitled not to be subjected to threats of disclosure – whether direct or indirect – which are designed to bring about, and have brought about, the payment of significant amounts of money to avert them.

21. To succeed at trial on the claim of harassment, the Claimant must establish that the Defendant has pursued a course of conduct towards him (comprising at least two occasions) which amounts to harassment (including causing alarm or distress) and which she knows or ought to know amounts to harassment of him. On the evidence before me, I am satisfied that the Claimant is likely to establish that the numerous communications he has received from the Defendant, and the tone and content of those communications, amount to a course of conduct which she ought to have known, and did know and intend, would cause him alarm and distress; that he was indeed alarmed and distressed; that the course of conduct was persisted in despite the Claimant's clearly expressed attempts to cause her to desist; that this behaviour of the Defendant's was not reasonable or otherwise defensible; and that, bearing in mind the blackmail dimension, it was harassment of a sufficiently serious nature as be equivalent to (or to constitute) criminal conduct.
22. The Claimant does not seek damages in this claim and it is obvious that damages for interim breach of the rights he asserts would not be an adequate remedy. Disclosure once made would be irreversible and destructive of his ability to seek to make out his claim.
23. I am satisfied on the evidence before me that, unless restrained by order, there is a very present risk that the Defendant will disclose the information and/or persist in threatening to do so. That is indeed precisely the course of conduct complained of. The Defendant appears to have ignored all representations to desist until she was served with the unsealed Order made on 24th June (upon which she has apparently desisted). She continues to resist engagement with these proceedings. I am satisfied in all these circumstances that the Defendant's behaviour should continue to be restrained by order until final determination of the claim.
24. I have only the Claimant's evidence before me at this interim stage. The Defendant has not (yet) put forward contrary evidence. These assessments are necessary provisional. Nevertheless, the Claimant's evidence at this stage is sufficient to satisfy me that the legal tests for granting the Claimant the interim remedies he seeks have been met.

Form of Order

25. The form of Order proposed by the Claimant, and which I am making today, includes a penal notice, which makes failure to comply with it a potential basis for committal for contempt of court, including potential liability to imprisonment, fines and seizure of assets. This is not a formality. It means that, unless the terms of the order are strictly complied with by the Defendant, and if she persists or causes others to persist in the conduct complained of, the Defendant can be arrested and be made subject to quasi-criminal proceedings and punishment.

26. The Order contains certain exceptions protecting the Defendant's legal position and her ability to seek legal advice and support in resisting the Claimant's claim. It also entitles her to apply to court for variation of the terms of the Order if there are reasons, which may not be apparent to me today and which I may not have been able to take into account, why the Order should be expressed differently or discharged altogether.