

Neutral Citation Number: [2014] EWHC 3319 (QB)

Case No: HQ14X03912

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Strand
London
WC2A 2LL

Tuesday, 16 September 2014

BEFORE:

MR JUSTICE STUART-SMITH

BETWEEN:

QRS

Claimant

- and -

(1) DANIEL CHARLES BEACH
(2) RICK KORDOWSKI

Defendant

MR BUSUTTILL (instructed by Brett Wilson LLP) appeared on behalf of the Claimant

Approved Judgment
Court Copyright ©

Digital Transcript of Wordwave International, a Merrill Corporation Company
165 Fleet Street, 8th Floor, London, EC4A 2DY
Tel No: 020 7421 4046 Fax No: 020 7422 6134
Web: www.merrillcorp.com/mls Email: mlstape@merrillcorp.com
(Official Shorthand Writers to the Court)

No of Folios - 47
No of words - 3406

MR JUSTICE STUART-SMITH:

1. The defendants have developed a grudge against the claimants who are solicitors, but are otherwise not to be identified. The defendants have chosen to express their grudge through the medium of the internet by setting up websites containing very serious assertions about the claimants, including allegations of dishonesty.
2. In these representative proceedings the first claimant applies on his own behalf and on behalf of others who have an identical interest to his own for an injunction prohibiting the defendants from continuing with this conduct. The others on whose behalf he brings the proceedings are referred to in this judgment as “Protected Parties.”
3. On 13 August 2014 Mrs Justice Slade made interim orders the effect of which were as follows: First, to confer anonymity in connection with these proceedings on the claimant and the protected parties in order to protect them from the further harassment that was apt to be the result of the reporting of the proceedings while the offending material remained on-line. Secondly, to permit the claimant to amend the claim form and Particulars of Claim, principally to give effect to the judge’s decision as to anonymity and, thirdly, to restrain the first defendant by injunction until trial or further order from further harassing the claimant and the protected parties, including in particular by prohibiting from: (a) continuing to publish the objectionable material, the subject of the proceedings, via the websites or; (b) publishing any fresh material referable to the claimant or his colleagues or the claimant’s firm whether on the internet or in any other medium.
4. Only limited orders were made against the second defendant, because it became apparent during the hearing that he had not been properly served. Since that hearing both defendants had been properly served with Mrs Justice Slade’s orders and the amended claim form, amended Particulars of Claim and response pack.
5. The consequence of Mrs Justice Slade’s order was that the websites that the defendants had been using were removed from the internet though this did not remove adverse search engine results and associated derogatory snippets. There is clear evidence that further websites have been set up to carry on the campaign of harassment in contravention of the orders made by Mrs Justice Slade.
6. On about 6 September 2014 the first defendant started publishing derogatory material on three further websites. When those websites were taken down on 8 and 9 September, two further websites were used to publish similar or identical derogatory material. At the same time the defendants have failed to acknowledge service of the proceedings or to serve defences. In those circumstances the claimant applies for judgment in default of defence. Because the nature of the relief claimed includes a permanent prohibitory injunction I have reviewed the merits of the application and give judgment on them. For the reasons that I will briefly outline, I am satisfied that final judgment should be entered and that a permanent injunction and other relief should be granted.

The Factual Background

7. This summary is based upon the evidence submitted by the claimants, which the court has read. Between November 2006 and May 2010 the claimant's firm was instructed by and acted for the first defendant in relation to a number of legal matters. In 2006 the second defendant started operating a website known as www.solicitorsfromhell.co.uk devoted to criticising professionals who he considered had acted improperly. Other persons were invited to submit complaints on payment of a fee. In June 2008 the second defendant had registered and taken ownership of the domain name www.solicitorsfromhell.net. In August 2010 that website was being operated as a mirror site to www.solicitorsfromhell.co.uk.
8. Between June 2010 and January 2011 the first defendant pursued a number of complaints about the manner in which the claimant and Protected Parties had acted on his behalf.
9. Sometime between 11 and 15 November 2010 the first defendant published a defamatory posting concerning the claimant and one of the Protected Parties, giving information which clearly identified them, their work and their firm.
10. On 13 May 2011 the firm issued proceedings in libel against the second defendant in relation to this posting and on 23 May 2011 it was granted an interim injunction by Mrs Justice Sharp, as she then was, restraining the further publication of the posting. The posting was in fact removed from the website just before the injunction was granted.
11. On 15 November 2011 Tugendhat J entered judgment against the second defendant in other proceedings, known as the Law Society v. Kordowski [2011] EWHC 3185 QB. He ordered the second defendant to remove the [solicitorsfromhell.co.uk](http://www.solicitorsfromhell.co.uk) website from the world wide web. That was subsequently done.
12. On 2 December 2011 the claimant's firm discontinued its libel proceedings against the second defendant by consent, the stated reasons for that discontinuance being that there was nothing else they could meaningfully hopefully achieve follow the grant of the final injunction in the Law Society proceedings and that the second defendant had been declared bankrupt on 29 September 2011.
13. On 7 December 2011 Tugendhat J granted further final injunctions prohibiting the second defendant from being involved in the operation of websites similar to www.solicitorsfromhell.co.uk. By 11 January 2012 www.solicitorsfromhell.net had appeared on the world wide web in a regenerated form claiming to be the "successor in title to www.solicitorsfromhell.co.uk."
14. On 9 March 2012 the first defendant registered and took ownership of three domain names which clearly referred to the claimant and his firm.
15. On 25 April 2012 the firm wrote to the first defendant about his registration and use of the new domain name. The second defendant wrote back on the first defendant's behalf indicating that he was the first defendant's agent and requesting that all future communications in relation to the matter should be directed to him.

16. In May 2012 the first defendant registered and took ownership of another domain name and in August 2012 a further domain name, both of which were used to publish derogatory material against the firm and named individuals.
17. On 28 March 2013 the firm wrote to both defendants indicting that they considered them to be pursuing a course of conduct that amounted to harassment of its employees and acting in breach of the injunctions granted by Tugendhat J in the Law Society proceedings. On 30 July 2014 letters of claim foreshadowing the present proceedings were sent to both defendants. There was no reply.
18. On 6 August 2014 the claimant issued the claim form and Particulars of Claim in these proceedings and the application notice in relation to an application for interim relief. One of the websites went off-line that day and although the first defendant was properly served, it subsequently emerged that the attempted service on the second defendant was not effective for the purposes of the interim application.
19. That application came before Mrs Justice Slade on 13 August 2014. I have already summarised the effect of the orders that she made. Since then the following events have occurred: the amended claim form, together with the amended Particulars of Claim and response pack and copies of Mrs Justice Slade's orders were served personally on the second defendant on 15 August at his present address. On 16 August the same documents were served personally on the first defendant.
20. By an email and letter to the claimant's solicitors dated 18 August 2014 the second defendant acknowledged receipt of the documents. He denied any involvement with the websites in question and said that he demanded the discharge of Mrs Justice Slade's order. The claimant's solicitors replied on the same day requesting information. The second defendant did not reply.
21. On or about 19 August the first defendant posted new material on one of the websites which demonstrated his awareness of the proceedings. Amongst other things he suggested that he and the claimants should engage in court, which is clearly inconsistent with his failure to take any part in the present proceedings. Later that day the registrar of the domain names of the offending websites which had been identified at the time of the application to Mrs Justice Slade took steps to remove those websites from the internet. That, however, left the phenomenon of adverse search engine results and derogatory snippets.
22. On or about 5 September 2014 the first defendant started to publish the offending material on three new websites which he had registered. On one of the websites which he had registered he published some of the litigation papers, including the original Particulars of Claim and the draft order for the hearing before Mrs Justice Slade, both of which published the names of the claimants in breach of Mrs Justice Slade's order.
23. On 8 September the present application was issued and listed for hearing today. On 8 and 9 September 2014 steps were taken to remove the three further websites from the internet, although the phenomenon of adverse search engine results and derogatory snippets continues.

24. On 10 September 2014 the second defendant emailed the claimant's solicitors complaining that the service of court documentation on him was causing distress to his wife, who has the misfortune to be seriously ill. He said he would be consulting counsel and the police with a view to bringing proceedings against the claimant for intimidation and harassment with attempted extortion and demanded that he be dropped from the proceedings. The claimant's solicitor replied courteously the same day, again asking the second defendant to provide the information previously requested on 18 August. No reply had been received by the time of this hearing.
25. On or about 11 September 2014 the offending material reappeared on two new websites with domain names that were closely linked to those which had previously been used. Those websites are on-line today.

The Procedural Position

26. The defendants did not attend the hearing. At the outset Mr Busuttill asked that hearing should proceed in their absence pursuant to the discretion provided by CPR 23.11. I directed that the hearing should proceed, it being clear that the defendants had been properly served and were fully aware of the proceedings and the order of Mrs Justice Slade, as well as being properly served with the present application. The present application was served on the second defendant personally on 8 September 2014 and upon the first defendant's wife at his home on the same day. The first defendant's wife said that he would be returning home and that she would give him the documents when he did. The documents were also sent to each defendant by first class post on 8 September and emailed to the email addresses which it is known that they use. No explanation for their non-attendance has been offered and the need for a speedy resolution of the issues raised in the case has been emphasised by the mushrooming of new websites since 13 August 2014 in direct contravention of the interim prohibition imposed by Mrs Justice Slade that day.
27. The conditions for judgment in default have been satisfied. The amended claim form is deemed to have been served on both defendants on Tuesday, 19 August 2014, two business days after personal service was effected. The amended Particulars of Claim is deemed to have been served on 18 August 2014 the next business day after personal service was effected. The last day for service of acknowledgement of service before the expiry of the 14 day period from service of the amended claim form allowed by CPR 4.10.3(1)(b) was 2 September 2014.
28. The claimant filed certificates of service at court on 4 September within the time allowed by CPR 6.17(2). Subsequent checks with the court have led to confirmation that neither acknowledgements of service nor defences have been served. The amended Particulars of Claim were amended on 15 August 2014. Since then six additional websites have emerged. Each is clearly related to the websites that were identified in the amended claim form and the amended Particulars of Claim, having similar names and similar or identical material to that appearing on the websites that had already been identified. In these circumstances the claimant wishes to obtain an order which specifically encompasses the later websites.
29. It is not, in my judgment, appropriate for the court to make an order that goes wider than the current claim form and statement of case being considered when the order is made, but it would be quite unjust if a defendant upon receipt of a claim form and

statement of case could stymie the court's powers and process by the simply expedient of replicating its previous conduct under a slightly altered domain name. I therefore gave leave during the hearing to re-amend the amended Particulars of Claim to incorporate reference to the later websites and to seek relief relating to them including requiring the defendants to take them down and I ordered that further service should be dispensed with before the making of the main order to which this judgment relates.

30. My reasons for doing so were first, the injustice to the claimant if the court's process were to be frustrated in the way I have just mentioned and, second, the lack of any injustice to the defendants, given that the later websites appear to be a deliberate course of conduct intended to frustrate the court's powers and to do so in direct contravention of the order of Mrs Justice Slade. Specific evidence of this is provided by the later websites, which include the statement in a posting under the first defendant's name that:

“Regarding websites, you will eventually work out that I can set up new websites faster than you can take them down.”

31. Although the websites assert that the first defendant is no longer updating the websites due to ill health and that the websites have a new “owner” it is clear from their content that their main or sole purpose is to publish the derogatory material relating to the first defendant's grudge, which had previously appeared on the websites that had been taken down. In the absence of any evidence or engagement from the defendants it appears overwhelmingly probably that the new websites are a continuation of the harassment to which the order of Mrs Justice Slade was directed and I find that they are.

32. In correspondence the second defendant has denied any continuing involvement with the offending websites. He too has chosen not to engage with the court's process by appearing or providing evidence for the court to consider and evaluate. The court is left with two compelling pieces of evidence about the second defendant. The first is the fact that the manner of the attacks on the claimant and the protected parties is very similar to those previously orchestrated by the second defendant by the use of websites with similar generic names and the posting of derogatory comments on-line. The second is the second defendant's statement in April 2012 that he was writing on the first defendant's behalf as his agent and requesting that all future communications in relation to the matter should be directed to him, the second defendant. There is nothing in the evidence, apart from the letter to which I have referred, to suggest that his position has changed or, if it has, how and when it changed.

33. The evidence before the court strongly supports the inference that the second defendant remains involved and responsible just as he said he was in 2012. Had he wished to contest that inference the second defendant could and should have done so in these proceedings.

Should the Orders be made

34. The evidence I have summarised above shows a clear course of deliberate and unlawful harassment of the claimant and the protected parties. It is also clear that

there is a high degree of probability that unless restrained the defendants will continue to harass the claimant and the protected parties as they have done before and since the order of Mrs Justice Slade on 13 August 2014.

35. I accept as an accurate statement of the law a passage from the 7th Edition of Spry's Principles of Equitable Remedies at page 46 which states:
"Therefore the criterion by which the degree of probability of future injury must be established is not fixed or invariable but rather depends on the various other relevant circumstances of the case. Hence the greater the prejudice or inconvenience that may be caused by the apprehended injury, if it occurs, the more readily will the court intervene despite uncertainties and deficiencies of proof; and it has been said by Russell LJ that the "degree of probability of future injury is not an absolute standard: what is to be aimed at is justice between the parties, having regard to all the relevant circumstances". The court will take account of all relevant matters and will make such orders as appear most just in view of the various interests of the parties and of third persons."
36. Here, the degree of prejudice and inconvenience to the claimant and the protected parties is high. Although some people, if they came across the postings, may robustly take the view that they are baseless disgruntled rants, the allegations of dishonesty appearing prominently on search engine results are capable of doing significant damage to the firm as well as causing distress and humiliation to the individuals concerned.
37. The likelihood of future repetition is high to the point of virtual certainty in the light of what has happened since the order of Mrs Justice Slade. Balancing these considerations against the nature of the restraint that an order would impose on the defendants the balance falls clearly and firmly on the side of making the order sought by the claimants against both defendants. Put another way, the order sought is necessary and proportionate in order to protect the claimant and the Protected Parties from further unlawful harassment.
38. I have given particular attention to the effect that the proposed order would have upon the defendants' right to freedom of expression. However, that right is not unlimited and the defendants have chosen not to take their opportunity to assert it by serving any response to the claim or this application. The consequence of their decision is that there will be final judgment in the claimant and protected parties' favour which establishes the unlawfulness of the harassment by both defendants. In those circumstances the claimant and protected parties are entitled to a permanent injunction to vindicate the right that they have proved against each defendant -- see ZAM v. CFW [2013] EWHC 662 QB at paragraph 22 per Tugendhat J.
39. I have separately considered whether or not Mrs Justice Slade's anonymity order should be continued. I am satisfied that it is necessary to do so since otherwise it would be open to people to identify the claimant and the protected parties by accessing the search engine results and the further websites that have been set up. If that is done the proper purpose of any injunctive relief will be frustrated -- see the

Practice Guidance on Interim Non-disclosure Orders Guidelines at Clause 4.A.ii.

40. For these reasons there will be final judgment on liability for the claimant and Protected Parties (who are to remain anonymous) against each defendant. A permanent injunction is issued which prohibits the defendants or anyone acting on their behalf from continuing the course of unlawful harassment on which they have engaged. The claimant shall have his costs of the action to be assessed if not agreed. I will hear counsel on whether there should be an interim payment on account of costs and if so, in what sum.
