Neutral Citation Number: [2023] EWHC 1761 (KB)

Case No: KB-2023-001440

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/07/2023

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

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Between :

ARMSTRONG WATSON LLP **Claimant**

- and –

PERSON(S) UNKNOWN
responsible for obtaining data from the Claimant's IT systems on or about 28th February to 6th March 2023 and/or who has disclosed or is intending or threatening to disclose the information thereby obtained **Defendant(s)**

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Mr Adam Speker KC (instructed by DAC Beachcroft LLP) for the **Claimant**

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Approved Judgment

This judgment was handed down remotely at 5pm 11th July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE COLLINS RICE

Mrs Justice Collins Rice :

Introduction

1. The Claimant describes itself as a limited liability partnership headquartered in Carlisle which provides professional accounting, tax, financial and related services in the UK.

2. It has reason to believe it is the victim of a ransomware cyberattack. From the written evidence before me, on or about 28th February to 6th March 2023, someone, or more than one person, hacked into its IT system and obtained a quantity of its confidential electronic documents. The hacker(s) have threatened to disclose or sell the information, including on the dark web, unless a ransom is paid.

3. An urgent application by the Claimant, made without notice, for an interim injunction was heard, in private, on 28th March 2023, by Ritchie J. The Judge handed down a public judgment (*Armstrong Watson LLP v Persons Unknown [2023] 4 WLR 41*), and granted relief in the terms sought, with provision for a return date and the completion of various steps, by each party, by the dates specified.

4. The matter came before Linden J on the return date, 21st April 2023. He proceeded in the Defendant's/Defendants' absence and considered the matter on the papers, setting out his reasons for doing so in a public judgment (*Armstrong Watson LLP v Persons Unknown [2023] EWHC 921 (KB)*). The Judge was satisfied that the steps required of the Claimant, including filing and serving a claim form and particulars of claim, had duly been taken. None of the steps required of the Defendant(s) has been taken. By not complying with the Order of Ritchie J, to the timetable set or at all – including by failing to identify themselves and to deliver up and/or delete the information – the Defendant(s) were already in breach of the injunctive relief granted.

5. By Order of 24th April 2023, Linden J continued the injunctive relief, made provision for service, and gave further directions. These included the following:

> [3.] The Defendant or each of them must serve a Defence to the Particulars of Claim by 4pm on Friday 5 May 2023.
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> …
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> [5.] If the Defendant or each of them does not serve a Defence, the Claimant must take such steps as they are advised to conclude the action, including but not limited to applying for default and/or summary judgment, any such application to be issued by Friday 16 June 2023.

6. The timetable set at paragraph 3 of the Order already represented an extension of the time allowed for filing an acknowledgment or service or defence pursuant to Civil Procedure Rule 10.3(1)(a); the period of 14 days provided for there had expired on 20th April.

7. By an application notice dated 15th June 2023, the Claimant now seeks judgment in default of acknowledgment of service or defence, final injunctive relief, and

derogations from open justice to protect the confidentiality of the case papers consistently with the substantive relief it seeks.

Procedure

8. Civil Procedure Rule 23.8 provides that a court may deal with an application on the papers without a hearing, if the parties agree, or otherwise '*if the court does not consider that a hearing would be appropriate*'.

9. The Claimant has requested that its application be dealt with on the papers. It draws my attention to the decision to proceed on the papers taken by Warby J (as he then was) in *Clarkson Plc v Person(s) Unknown* [2018] EWHC 417 (QB). That judgment confirmed that open justice is a vital principle, but that not every application needs to be dealt with at a hearing and many are not. It continued:

> [7] It is unlikely that the Court could or would deal on the papers with an application for a final order that determines civil rights, if that way of proceeding was opposed by one of the parties. But there are cases like the present, where one party has failed to engage with the proceedings and has therefore expressed no view about the matter. It is not necessary to decide whether that involves a waiver of the party's rights. I did not consider a hearing to be 'appropriate' in this case, because it would have added to the expense of this claim without serving any sufficiently useful purpose. On the facts of this case, and this application, the open justice principle can be properly respected and compliance with Article 6 [ECHR] achieved without the need for a hearing. That can be done by making the order and, through this judgment, publicising the fact it has been made and the basis for making it. Indeed, a process of this kind may even represent a more practical and effective way to give effect to the open justice principle and the Convention requirement for a public judgment, than holding a hearing.
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> [8] This is a claim brought against a Person or Persons Unknown and, as is quite common in such cases, the identity of the defendant(s) remains unknown. So, there is nobody defending the claim who could benefit from the advantages that a hearing often brings with it for the litigant. The case has not proceeded in secret. There have already been two public hearings, at each of which a public judgment has been given and recorded. Transcripts of those judgments are available as of right. There is little that has changed since the last hearing, at which I granted an interim order and gave a reasoned judgment explaining why. This is not a case in which there is any likelihood that a public hearing of this application would be more effective in bringing the attention of others to matters of importance than the method I am adopting. Rather the contrary. Transcripts are not created or published as a matter of course. They are not often applied for by third parties. This written judgment, by contrast, will be posted on a public website. The

> reality is that information about these proceedings will be more accessible, if the case is dealt with in this way, than it would be if the matter had been dealt with at a hearing.

10. I adopted the same approach and reasoning, on very similar facts to those of the present case, in *Pendragon PLC v Person(s) Unknown [2022] EWHC 2985 (KB)*. I also consider the same approach and reasoning fully applicable to the facts of the present case. There have been no material developments since Linden J's Order: the Defendant(s) have continued to be entirely disengaged with these proceedings. I do not, on that basis, consider that a hearing would be appropriate. I have accepted the Claimant's invitation to proceed to consider its application on the papers.

11. For the purposes of section 12 of the Human Rights Act 1998, I am satisfied on the basis of the witness statement it has provided that the Claimant has taken all reasonable steps, by service as directed, to notify the Defendant(s) of its application, that they have not responded to it, and that the most likely reason they have not responded is that they have no intention of identifying themselves as the perpetrators of the apparent information blackmail, a form of expression properly abridged by law.

Default Judgment

(a) Legal framework

12. According to CPR 12.3, the basic conditions to be satisfied for entering default judgment are that a claimant has duly filed and served a claim form and particulars of claim, the defendant has not filed acknowledgment of service or defence to the claim, and the time for doing so has expired.

13. CPR 12.12(1) directs a court considering a default judgment application to '*give such judgment as the claimant is entitled to on the statement of case*'. I have directed myself to the guidance set out in *Glenn v Kline* [2020] EWHC 3182 (QB) at [24]-[27] as to the correct approach to applying this rule. Nicklin J said this:

> [25] Although, under this rule, the Court must consider the judgment to which the claimant is entitled, the effect of default judgment is that the pleaded facts are treated as established. If those facts support the cause of action, the Court need go no further. The purpose of the requirement for an application is either to enable the court to tailor the precise relief, so that it is appropriate to the cause of action asserted, or otherwise to scrutinise the application in particular circumstances calling for more than a purely administrative response. Within these parameters, the Court must make an assessment of whether the applicant is entitled to the default judgment sought, or to some lesser or different default judgment: *Football Dataco Ltd -v- Smoot Enterprises [2011] 1 WLR 1978* [16]-[19] *per* Briggs J.
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> [26] Evidence going to the merits is not required. The relief granted will normally be sought and granted on the basis of the claimant's statement of case. That procedure is efficient and proportionate. Such a judgment is final and, to the extent it involves consideration of what relief is justified on the basis of the facts alleged in the statement of case, it does have an element of merits assessment: *QRS -v- Beach [2015] 1 WLR 2701* [53] *per* Warby J.

[27] In *Brett Wilson LLP -v- Person(s) Unknown [2016] 4 WLR 69*, Warby J explained:

> [18] The claimant's entitlement on such an application is to "such judgment as it appears to the court that the claimant is entitled to on his statement of case": CPR r 12.11(1) [*CPR 12.12(1)*]. I accept Mr Wilson's submission that I should interpret and apply those words in the same way as I did in *Sloutsker -v- Romanova [2015] EWHC 2053 (QB)* [84]:
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> > "This rule enables the court to proceed on the basis of the claimant's unchallenged particulars of claim. There is no need to adduce evidence or for findings of fact to be made in cases where the defendant has not disputed the claimant's allegations. That in my judgment will normally be the right approach for the court to take. Examination of the merits will usually involve unnecessary expenditure of time and resources and hence [be] contrary to the overriding objective. It also runs the risk of needlessly complicating matters if an application is later made to set aside the default judgment: see *QRS -v- Beach [2015] 1 WLR 2701* esp at [53]-[56]."
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> [19] As I said in the same judgment at para 86:
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> > "the general approach outlined above could need modification in an appropriate case, for instance if the court concluded that the claimant's interpretation of the words complained of was wildly extravagant and impossible, or that the words were clearly not defamatory in their tendency."
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> Those instances of circumstances which might require departure from the general rule are not exhaustive, but only examples. I have considered whether there is any feature of the present case that might require me to consider evidence, rather than the claimant's pleaded case, verified by a statement of truth and uncontradicted by the defendants. I do not think there is any such feature. I have therefore proceeded on the basis of the pleaded case, both in my introductory description of the facts above, and in reaching the conclusion that the claimant has established its right to recover damages for libel, and to appropriate injunctions to ensure that the libel is not further published by the defendants.

(b) The Claimant's claim

14. I have read the Claimant's claim form and particulars of claim with care. This is a breach of confidence claim.

15. The particulars of claim set out the correct technical or legal components of the cause of action, namely that the information had the necessary quality of confidence; that the Defendant(s) obtained it without consent or authorisation, knowing that they did so, and in circumstances in which they knew or ought to have known that the Claimant

reasonably expected the information to be and remain private and confidential; that the Defendants owed the Claimant a duty of confidence in consequence; and that in accessing, obtaining, retaining, using, publishing, communicating and/or disclosing the information (and/or intending and/or threatening to do so) they are acting in breach of that duty of confidence.

16. The particulars of claim also set out allegations of fact in relation to each of these components. These deal with the identity and nature of the information, the circumstances in which it was obtained, and the Defendant's/Defendants' subsequent course of conduct, including threats of disclosure or sale unless demands for payment were met.

17. I am satisfied that the cause of action is accurately pleaded out, and the facts alleged adequately support it.

(c) Procedural preconditions for default judgment

18. I have witness evidence, which I accept, that the Defendant(s) has/have not filed and served a Defence to the Particulars of Claim by 4pm on Friday 5th May 2023 or at all, nor has it made any other response or application.

19. The Defendant(s) has/have not indicated that they are outside the jurisdiction. Even if they are, the extended time limits for filing acknowledgement of service or defence set out in the table in Practice Direction 6B for most countries of 21-24 days has now expired.

(d) Conclusions on liability

20. I am satisfied in these circumstances, and for these reasons, that the Claimant is entitled to default judgment on its statement of case.

Remedy

21. The Claimant seeks permanent injunctive relief, both to restrain use and disclosure of the information, and to require deletion or delivery up of the information by, together with a signed witness statement.

22. On the basis on which it has obtained default judgment, I consider its entitlement to the injunctive relief it seeks irresistible. I bear particularly in mind the quality of blackmail attaching to the Defendant's/Defendants' course of conduct, their failure to engage with this litigation, and their breaches of previous Orders. I am entirely satisfied that there is a high risk that they will persist in this course of conduct, including making and carrying out threats of unlawful disclosure, unless clearly restrained by Order of Court subject to penal sanctions.

Order

23. The Order giving effect to this decision provides for judgment to be entered against the Defendant(s) under the provisions of CPR Part 12 and for the permanent injunctive relief sought by the Claimant. It also provides for the Defendant(s) to pay the costs of the Claimant as the successful party on its claim and application.

24. It makes provision for the continuing supervision by the court of access to and use of documents prepared for this litigation, in order to protect the confidentiality to which the Claimant has now established its entitlement. I am satisfied that this provision is strictly necessary to maintain the effectiveness of the relief now granted.

25. The Order provides, including by way of safeguard for the Defendant(s), for liberty to apply for variation or discharge of the order by anyone affected. For the further assistance of the Defendant(s), I set out below the provisions of CPR 13.3 which deals with cases where the court has a discretion to set aside or vary judgment entered under Part 12.

> (1) …the court may set aside or vary a judgment entered under Part 12 if
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> a. the defendant has a real prospect of successfully defending the claim; or
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> b. it appears to the court that there is some other good reason why-
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> i. the judgment should be set aside or varied; or
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> ii. the defendant should be allowed to defend the claim.
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> (2) In considering whether to set aside or vary a judgment entered under Part 12, the matters to which the court must have regard include whether the person seeking to set aside the judgment made an application to do so promptly. (Rule 3.1(3) provides that the court may attach conditions when it makes an order.)