Neutral Citation Number: [2024] EWHC 1855 (KB)

Case No: KB-2024-001672

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/07/2024

Before :

DEPUTY HIGH COURT JUDGE AIDAN EARDLEY KC

- -

Between :

RBT	**Claimant**
- and –	
YLA	**Defendant**

- -
- -

David Mitchell (instructed by **JMW Solicitors LLP**) for the **Claimant**
The Defendant did not attend and was not represented

Hearing dates: 12 July 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 18 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Aidan Eardley KC :

Introduction

1. On 12 July 2024, at a return date hearing, I continued until trial or further order the injunction granted by Steyn J on 7 June 2024, as varied by Kerr J on 21 June 2024 with some further modifications of my own. These are my reasons. They are necessarily unspecific in some respects in order not to undermine the anonymity order presently in place.

Background

2. The Claimant is the founder and chairman of an asset management company (**the Business**). In 2023 the Business appointed the Defendant to a management position. There were a number of complaints made about the Defendant's conduct at work which, in fairness to the Defendant, I should say he disputes. The Business therefore decided to dismiss him before the end of his probationary period. The Defendant initiated Employment Tribunal proceedings for unfair dismissal. These were struck out because he had not been employed for the minimum period necessary to make such a claim.

3. The Claimant states that, at some point after his dismissal, the Defendant turned up at the Claimant's home unannounced and blocked the driveway for some 3 hours. The Claimant says that he only became aware that it was the Defendant when he went to drive out of his property. He says he was initially startled but then said, in a joking way, that the Defendant should not sneak up on people like that because he could get shot (the Claimant lives in a rural area). The Claimant then invited the Defendant in to his home and they spoke. The Defendant pleaded for his job back but the Claimant said that this was a matter for the HR department and nothing to do with him. This incident is not relied upon as part of a harassing course of conduct, but it is relevant background.

4. On 31 May and 1 June 2024 the Defendant sent communications to the Claimant and then on 4 June 2024 to two individuals closely involved with the Claimant and the Business. I describe these communications in further detail below. It is these communications that precipitated the Claimant's application for an interim injunction in harassment and which are now relied upon in the Particulars of Claim as constituting a course of conduct amounting to harassment.

History of the Proceedings

5. The Claimant issued an application on 6 June 2024 and it was heard by Steyn J on 7 June 2024. She was satisfied that it was appropriate to proceed without notice (even informal notice) being given to the Defendant. She granted an interim injunction which, in summary, prohibits the Defendant from (a) physically approaching the Claimant or his family; (b) making any direct contact by any means with the Claimant, his family, his business or his staff; and (c) publishing, communicating or disclosing any information to any third party about the Claimant, his family, his business or his staff.

6. The injunction also ordered the Defendant, by 14 June 2024, to serve on the Claimant's solicitor (a) copies of all communications he has published, communicated or disclosed to any third party about the Claimant, his family, his business or his staff; (b) copies of all information obtained by the Defendant from the Claimant's business that is in his possession or the possession of third parties; and (c) a witness statement confirming

compliance with (a) and (b) or alternatively legal reasons for non-compliance, together with details of any third party recipients and the date and means of communication with them (**the Mandatory Orders**).

7. The injunction and other materials were duly served on the Defendant (using the alternative methods that Steyn J had authorised: email and WhatsApp). A claim form and particulars of claim were filed and served by email on, respectively, 10 and 11 June and then re-served by WhatsApp on 18 June 2024.

8. The return date was initially listed for 21 June 2024. However, on the morning of the hearing, the Defendant emailed the Court stating that he had not had adequate time to prepare and was unable to attend. In those circumstances, Kerr J made an order setting a new return date for 12 July 2024 and continuing the injunction in the meantime. He made a small variation to the injunction: the prohibition on communicating with third parties is now subject to an exception in the case of *"any complaint by the Defendant to a properly appointed regulator which regulates the Claimant's business, provided that such complaint is in writing, not made in public, and copied to the Claimant's solicitors at the time it is made"*.

9. On 28 June 2024 (and therefore long after the deadline specified by Steyn J) the Defendant purported to comply with the Mandatory Orders. As to Mandatory Order (a), he said there was nothing to disclose because he had not made any communication to any third party about the Claimant, his family, his business or his staff. He refused to comply with Mandatory Order (b) but instead made a witness statement stating in effect that he needed to retain the information he had removed from the Business in order to act as a whistleblower and to bring a counterclaim. The Claimant contends that the Defendant remains in default of the Mandatory Orders.

10. On 4 July 2024 the Defendant emailed the Court asking to attend the hearing on 12 July 2024 by video link. I directed that, if he wished to do so, he should file an application notice supported by evidence as soon as possible. I was not prepared to permit the Defendant to appear remotely on the basis of an informal request. That is because (a) as I explain below, he has boasted of making covert recordings (recording a court hearing is a contempt of court) and (b) his response to the Mandatory Orders has been, at best, late and reluctant. In my judgment these factors gave rise to a real risk that the hearing might be disorderly if the Defendant were to participate remotely. Strong evidence-based reasons for permitting him to participate remotely would be required in order to outweigh that risk.

11. No application was forthcoming but, on the evening of Wednesday 10 July 2024, the Defendant sent an email to the Claimant's solicitors inviting them to agree to vacate the hearing on medical grounds and giving them consent to obtain his medical records from his GP. He had not mentioned any medical difficulties in his email of 4 July 2024 but had put forward different reasons for wishing to participate remotely. Neither had he mentioned medical issues when explaining his non-attendance on 21 June 2024. In his 10 July email, he mentioned two conditions but in fairly diffident terms. He said he thought he "may" have Covid; and he referred to another condition which he described as "acute" but said that he had been "suffering somewhat with [that condition] recently". Some hours before sending the 10 July email, the Defendant had telephoned

the Claimant's solicitors stating that he was so ill he could not see or read a screen or send emails.

12. A further email to the Court arrived on the afternoon of 11 July 2024, asking for an adjournment. The Defendant said he had taken a Covid test and was positive, and that his GP had advised him not to leave the house. He referred again to his other condition, repeating that it was "acute" but now saying he had been suffering from it for the last 4 years.

13. On 11 July 2024 at 19:38 the Defendant emailed the Claimant's solicitors objecting to a piece of audio evidence being played in open Court at the hearing on 12 July 2024. The Claimant's solicitors had sent the audio file to the Court at 17:07 that afternoon, cc-ing the Defendant. The Claimant makes the point that the Defendant must have been following the run-up to the hearing closely.

14. On the morning of the hearing (12 July 2024), the Defendant sent an email attaching a page from his medical records. It notes a telephone call made on 10 July 2024 at 13:21 to an administrative member of staff at his GP's surgery which reads *"patient called to inform us he thinks he could have covid…advised to take covid test – declined. patient asked me to write on file to make a record."*. In the covering email, he says that he drove to the GP's surgery that morning (12 July) to obtain the document. He also says that it is inaccurate in its suggestion that he declined a Covid test. He says that what in fact happened is that he declined to come in to the surgery for a test on 10 July 2024 because he was not in a fit state to leave the house and did not want to risk exposing anyone to Covid.

Hearing in absence

15. The Claimant's solicitors and counsel attended Court on 12 July 2024 and invited me to proceed in the absence of the Defendant, who had not attended. Applying the well-known principles gathered together in *Decker v Hopcraft* [2015] EWHC 1170 (QB) at [21]-[31] and the relevant cases mentioned in the commentary to CPR 23.11 and 39.3 in the White Book, I decided to do so for the following reasons.

16. First, it is not the job of the opposing party (or the Court) to obtain and examine the medical records of a party seeking an adjournment. Indeed medical records on their own will often be of little assistance. What is required – and should be supplied by the requesting party – is evidence from a medical practitioner explaining the patient's condition and, crucially, how it will prevent him attending Court or participating in the hearing (as well as other matters). Second, there is no such evidence before the Court, not even a print out from the Defendant's records confirming his assertion that, on 11 July 2024, a GP had advised him not to leave the house (even though the Defendant *was* able to obtain an entry from his GP records on the morning of 12 July 2024). Third, I am concerned by the inconsistencies in what the Defendant has said about his medical conditions, which will be apparent from the narrative I have set out above. The Claimant invites me to conclude that the Defendant is not genuine and trustworthy, and has invented or exaggerated his account because he realised that the reason he had previously advanced for not attending the hearing was not going to be accepted. I do not need to go that far. It may be true that he is now too ill to attend and participate. The short point is that this is insufficiently evidenced at present, particularly against the background of the communications I have set out at [10]-[14] above. Fourth, although

this was certainly an important hearing from the Defendant's perspective, the Court was not making a final determination of his rights. The application was to hold the ring until trial by continuing the interim injunction. Fifth, this was also an important hearing for the Claimant, who seeks the peace of mind that will come from continuing the injunction until trial or further order. Sixth, the return date has already been adjourned once, through no fault of the Claimant.

17. Accordingly, even though this was the Defendant's first request for an adjournment on medical grounds, the factors against adjourning were overwhelming. The Defendant's position is protected to an extent by CPR 23.11. If he is genuinely ill but has not yet been able to obtain medical evidence, he can do so now and submit it with an application for the return date hearing to be re-run. In reaching this decision I have taken into account the fact that the Defendant is unrepresented, in accordance with CPR 3.1A.

Legal Principles

Harassment

18. Section 1 of the Protection from Harassment Act 1997 (**PfHA**) materially provides:

"(1) A person must not pursue a course of conduct - (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other.

(1A) […]

(2) For the purposes of this section […], the person whose course of conduct is in question ought to know that it amounts to […] harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to […] harassment of the other.

(3) Subsection (1) […] does not apply to a course of conduct if the person who pursued it shows -

(a) that It was pursued for the purpose of preventing or detecting crime,

(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable."

19. Section 7(2) provides some definitions including:

"[…]

(2) References to harassing a person include alarming the person or causing the person distress.

(3) A *"course of conduct"* must involve –

(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, […]

[…]

(4) *"Conduct"* includes speech.

(5) References to a person, in the context of the harassment of a person, are references to a person who is an individual."

20. The PfHA creates both criminal offences (see e.g. s.2) and civil liability (s3). The civil remedies available are an injunction and damages.

21. The question of what amounts to harassment has been considered in a large number of appellate and first instance cases. In *Hayden v Dickenson* [2020] EWHC 3291 (QB) Nicklin J summarised the principles that can be extracted as follows (citations omitted):

"i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; " a persistent and deliberate course of targeted oppression" […].

ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody's day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability under s.2: […].

iii) The provision, in s.7(2) PfHA, that "references to harassing a person include alarming the person or causing the person distress" is not a definition of the tort and it is not exhaustive. It is merely guidance as to one element of it […]. It does not follow that any course of conduct which causes alarm or distress therefore amounts to harassment; that would be illogical and produce perverse results […].

iv) s.1(2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would think the course of conduct involved harassment. The test is wholly objective: […]. "The Court's assessment of the harmful tendency of the statements complained of must always be objective, and not swayed by the subjective feelings of the claimant"[…].

v) Those who are " targeted " by the alleged harassment can include others "who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it" […].

vi) Where the complaint is of harassment by publication, the claim will usually engage Article 10 of the Convention and, as a result, the Court's duties under ss.2, 3 , 6 and 12 of the Human Rights Act 1998 . The PfHA must be interpreted and applied compatibly with the right to freedom of expression. It would be a serious interference with this right if those wishing to express their own views could be silenced by, or threatened with, proceedings for harassment based on subjective claims by individuals that they felt offended or insulted […].

vii) In most cases of alleged harassment by speech there is a fundamental tension. s.7(2) PfHA provides that harassment includes "alarming the person or causing the person distress". However, Article 10 expressly protects speech that offends, shocks and disturbs. "Freedom only to speak inoffensively is not worth having" […].

viii) Consequently, where Article 10 is engaged, the Court's assessment of whether the conduct crosses the boundary from the unattractive, even unreasonable, to oppressive and unacceptable must pay due regard to the importance of freedom of expression and the need for any restrictions upon the right to be necessary, proportionate and established convincingly. Cases of alleged harassment may also engage the complainant's Article 8 rights. If that is so, the Court will have to assess the interference with those rights and the justification for it and proportionality […]. The resolution of any conflict between engaged rights under Article 8 and Article 10 is achieved through the "ultimate balancing test" identified in *In re S* [2005] 1 AC 593 [17] *per* Lord Nicholls.

ix) The context and manner in which the information is published are all-important: [...]. The harassing element of oppression is likely to come more from the manner in which the words are published than their content […].

x) The fact that the information is in the public domain does not mean that a person loses the right not to be harassed by the use of that information. There is no principle of law that publishing publicly available information about somebody is incapable of amount to harassment.

xi) Neither is it determinative that the published information is, or is alleged to be, true: […]. "No individual is entitled to impose on any other person an unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do": […]. That is not to say that truth or falsity of the information is irrelevant […]. The truth of the words complained of is likely to be a significant factor in the overall assessment (including any defence advanced under s.1(3)), particularly when considering any application interim injunction […]. On the other hand, where the allegations are shown to be false, the public interest in preventing publication or imposing remedies after the event will be stronger […]. The fundamental question is whether the conduct has additional elements of oppression, persistence or unpleasantness which are distinct from the content of the statements; if so, the truth of the statements is not necessarily an answer to a claim in harassment.

xii) Finally, where the alleged harassment is by publication of journalistic material, nothing short of a conscious or negligent abuse of media freedom will justify a finding of harassment. Such cases will be rare and exceptional […].”

22. It has been doubted whether a claimant must show that they have actually been caused alarm and distress (or will be caused it without injunctive relief) but suggested that a claimant must at least show that they have endured the experience of “being harassed” (or will do so if the defendant’s conduct is not restrained). Further, it has been suggested that the course of conduct must be comprised of acts done in England and Wales, not elsewhere, and that the Claimant must also experience the effects of the harassment in this jurisdiction: See *Sayn-Wittgenstein-Sayn v Juan Carlos I* [2023] EWHC 2478 (KB) at [84]-[87], [284]-[292]; *Gerrard v Eurasian Natural Resources Corp Ltd* [2021] EMLR 8 at [94]; *Lawal v Adeyinka* [2021] EWHC 2486 (QB) at [17]-[23].

Blackmail and harassment

23. The offence of blackmail (Theft Act 1968 s.21) is made out where a person makes any unwarranted demand with menaces, with a view to gain for himself or another. A demand with menaces is unwarranted unless the person making it does so in the belief (a) that he has reasonable grounds for making the demand and (b) that the use of the menaces is a proper means of reinforcing the demand.

24. It is not unusual for a victim of blackmail to seek a civil remedy under the PfHA on the basis that repeated unwarranted demands with menaces are also a course of conduct amounting to harassment. In such cases, two particular considerations arise. First, very little weight will be given to the ECHR Art 10 rights of a blackmailer when those rights fall to be balanced against the rights and interests of the blackmail victim: *LJY v Persons Unknown* [2018] EMLR 19 at [29]. Second, the truth or falsity of allegations that a defendant is threatening to publish is perhaps even less relevant to the question of whether harassment is made out than is ordinarily the case: *" ...much blackmail gains its persuasive power from the fact that the allegation is true"*: *ibid* at [40].

Interim injunctions to prevent harassment

25. Where (as here) an injunction might affect the exercise of a defendant's ECHR Art 10 right to freedom of expression, the threshold test in Human Rights Act 1998, s.12(3) applies: *"No such relief is to be granted so as to restrain publication before trial unless the Court is satisfied that the applicant is likely to establish that publication should not be allowed"*. "Likely" generally means "more likely than not", though in exceptional circumstances (such as extreme urgency or a very great degree of risked harm) a lesser likelihood of success will suffice: *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253 at [21].

26. In a case where the nub of the application is the protection of the claimant's reputation, the Court will apply the more exacting threshold test identified in *Bonnard v Perryman* [1891] 2 Ch 269 which applies in defamation. Under the rule in *Bonnard v Perryman,* the Court will refuse interim relief if the defendant asserts on some credible basis that publication will be defensible: *LJY* at [45].

27. In determining whether the nub of the claim is the protection of reputation the Court must stand back and ask itself what really is the gist and purpose of the application: see *Siddiqi v Aidiniantz* [2019] EWHC 1321 (QB) (Warby J) at [94] and the cases cited there. The rule in *Bonnard v Perryman* is likely only to apply where the protection of reputation is the "sole or main purpose". The fact that the claim may be motivated in part by concern for reputational harm is unlikely to be sufficient to engage the rule: see *Linklaters LLP v Mellish* [2019] EWHC 177 (QB) at [35].

28. Where the HRA 1998 s.12 test (or, as the case may be the *Bonnard v Perryman* test) is satisfied, the grant or continuation of an injunction is a matter for the Court's discretion.

The Defendant's communications

29. On 31 May 2024 the Defendant sent an email to the Claimant (**the First Email**). It began by listing 12 names (11 individuals and a company) after which he wrote *"I'm sure most if not all these names are familiar to you and I; sure all your staff would be interested in hearing about them…where there's smoke, there's usually fire"*. In context, this appeared to be a suggestion that the named individuals and the named company are somehow disreputable and have connections with the Claimant or the Business. Later in the email the Defendant set out 14 hyperlinks to material publicly available on the

internet, and invited the Claimant to access them. Again, the implication, in context, is that people who follow these links will find damaging information about the Claimant or his business.

30. Among much detail complaining about how he was treated by the Business, the First Email has the following relevant features:

(1) A statement that, *"Maybe now I have the power to completely destroy* [the Business], *I don't want to have to do that, but if the law can't provide me with a just remedy, then I guess I'll just have to fight dirty until* [the Business] *financially compensates me for the losses I've incurred… Either way is good for me"*;

(2) A clear threat to send, in a matter of days, an email to *"everyone who works for* [the Business]*…the FCA, HMRC and SFO (Serious Fraud Office)"* as well as to other individuals having some connection to one of the Business's current projects, drawing their attention to the 14 hyperlinks. The Defendant boasts that he has the email addresses of everyone who works for the Business and has written all the emails and entrusted them to a family member so that they are ready to send;

(3) A statement that the Defendant had covertly recorded many conversations while working for the Business, and also at least 2 conversations with the Claimant. One of these was said to be a recording of their conversation in the Claimant's home when the Defendant had attended and blocked the driveway. The Defendant sets out words that he alleges the Claimant used on that occasion which, he insinuates, amounted to a veiled threat by the Claimant to shoot the Defendant and harm his children;

(4) A statement that the Defendant had gathered many emails and documents from the Business once his departure was on the cards;

(5) Various insinuations that the Claimant and the Business were involved in multiple frauds and false accounting which should be reported to HMRC, the SFO and others. Various different forms of fraudulent activity are mentioned;

(6) The words *"I can and will hound* [the Business] *like a rabid dog, I can and will completely destroy any credibility* [5 named individuals] *have in your office along with their fragile mental health"*;

(7) A request that the Claimant make the Defendant a financial offer within the time frame specified;

(8) A statement that he has had his life threatened in the past and that those who had made the threats had come to regret it, including an individual who the Defendant claims he ran over in his car, adding *"he didn't see me coming, there was no witnesses, I'm too smart to leave any evidence behind"*;

(9) A statement that he has engaged in extensive reconnaissance and surveillance of the Claimant *"both in your manor and online…"*;

(10) A statement that, if the Claimant and others ignore him, the Defendant *"will light so many fires around* [the Business] *that you…will only be able to watch it all burn to the ground while you await your Court dates"*;

(11) A statement that, if the Defendant has not received his settlement by the specified deadline, *"you can watch most of your staff plotting to leave whilst the SFO and HMRC open their investigations and your plans…go up in flames…".*

31. The Defendant then sent a message to the Claimant's mobile phone via WhatsApp at 08:06 (twice) and 08:08 on 1 June 2024 (**the WhatsApp Message**). It is a truncated version of the First Email (just the first few paragraphs), ending with an instruction to the Claimant to check his email.

32. On 4 June 2024 at 09:46, the Defendant sent another email (**the Second Email**) to two other individuals in the Business and closely connected to the Claimant. The Second Email is identical to the First Email except that it has an additional opening paragraph that effectively informs the 2 recipients that they too will be damaged by the Defendant's intended publicity and addresses to them the same demand for money that is made to the Claimant.

33. The Claimant says he first saw the First Email while he was abroad on business but did not fully take it in at that point. He arrived back in the UK on 1 June. His witness statement, though it is not entirely clear, implies that he saw the WhatsApp Message when he arrived home and switched his phone out of airplane mode.

The Claimant's evidence about the Defendant's allegations

34. In his First Witness Statement and on instructions through counsel to Steyn J, the Claimant has addressed the significance of the 12 named individuals/company and the 14 hyperlinks referred to by the Defendant.

35. In respect of most of the named individuals and the named company, the Claimant says that he either does not know them at all, or has some knowledge of them but that there is no significant connection between them and the Claimant or the Business. Likewise, he says that many of the hyperlinks connect to web pages that do not refer to himself or the Business and that he is unable to understand their relevance.

36. The Claimant explains that one named individual was the director of a foreign company which provided a service to the Business and which was placed into administration and then dissolved. The Claimant states that the Business was not connected with the underlying issues that gave rise to this company's demise and that he and the Business quickly took steps to identify an alternative provider of the service so as to ensure stability. One of the hyperlinks leads to a webpage that concerns the foreign company, but does not mention the Claimant or the Business. Another leads to a lengthy blogpost about the foreign company, published before its demise, and implies that it is involved in a fraud with the organisations it provides services to, including the Business, which is named. The Claimant's evidence is that this is false so far as the Business is concerned. He also says that the blog post, and 3 of the other hyperlinked webpages which make brief mention of the Business, are on websites operated by a company which has a history of publishing false and defamatory allegations about the Business.

He says that the Business's solicitors have been successful in the past in getting such content removed or altered.

37. The other named individual with whom the Claimant accepts an association is the founder and director of a company which was in a commercial relationship with the Business. The relationship broke down in acrimonious circumstances. The Claimant says that this individual then went on to post defamatory material online about the Claimant and the Business. The Business took defamation proceedings abroad but the Court there declined jurisdiction. The Claimant says that he considered legal action in England and Wales but ultimately decided against it because of the distraction from the Business it would cause him. One of the hyperlinks leads to a page containing some of this individual's allegations. The Claimant denies them.

38. One further hyperlinked page is a review of the Business. It makes an unspecific allegation of fraud which the Claimant denies.

39. Lastly, there is a hyperlink to a news report of a criminal conviction (for a licensing offence) of one of the companies falling within the Business. This was a few years ago. The Claimant confirms that the report is accurate.

40. So, to summarise, on the Claimant's evidence, the Defendant has either mischievously linked him and the Business to individuals or online material that have nothing to do with them, in order to suggest wrongdoing, or has identified online material that does concern the Claimant or the Business but which is, for the most part, false. On the Claimant's evidence, only the report of the licensing conviction says anything accurate about the Business.

41. As to the allegations of fraud that the Defendant makes in the body of the First Email, the Claimant addresses these in detail in his First Witness Statement and denies them. It is not possible to give further details in this public judgment.

42. As to the comments that the Defendant alleges the Claimant made when he attended the Claimant's house, the Claimant vehemently denies threatening the Defendant or threatening that he would harm the Defendant's children He considers that the Defendant may have misconstrued the jokey remark he made to the Defendant when he recognised him outside his house, and which I have set out above.

Decision and reasons

43. I remind myself that I am not making findings of fact. I have only limited evidence before me. My task is to consider, on that evidence, what the likely outcome at trial will be, recognising that the evidential picture may well change by the time the trial eventually takes place.

44. In my judgment, on present evidence, the test in HRA 1998 s.12(3) is satisfied. The Claimant is more likely than not to obtain at trial a final injunction preventing the Defendant from communicating with the Claimant and from carrying out his threat to publish material to third parties. I reach that conclusion for the following reasons.

45. First, the two Emails and the WhatsApp message are likely to be found to be deliberate, unacceptable, oppressive, highly objectionable and of a gravity that would sustain

criminal liability under PfHA s.2. Their tone is intimidating. They threaten to ruin the Claimant's business and to damage the Claimant's personal reputation. They go into great detail about how that will be achieved, both through a mass email campaign and through the use of covert recordings and documents the Defendant has accessed and/or retained unlawfully. There is a threat of physical violence. And there is the unsettling claim that the Defendant has been tracking the Claimant online and has carried out physical surveillance on him.

46. Second, at least the First Email and the WhatsApp message are clearly targeted at the Claimant. They are aimed at pressuring him into authorising the Business to pay the Defendant money. Likewise, the threatened publications to employees, business partners and other third parties, if carried out, would similarly be targeted at the Claimant. They would be bound to come to his attention and would done to increase the pressure on the Claimant to authorise payment.

47. Third, the Defendant is clearly persistent. As he puts it, "*I can and will hound* [the Business] *like a rabid dog"*. His more recent activity bears this out. He has taken to contacting the Claimant's solicitors, including in an intimidating voice message, repeating his threats to send his emails in vivid language such as *"my itchy trigger finger is getting itchier every single day"*. According to the Claimant's latest evidence, the Defendant has recently submitted two job applications to the Business (for roles he does not appear to be qualified for).

48. Fourth, it is likely that the Defendant will be found to have engaged in blackmail. The Emails and the WhatsApp message plainly constitute demands with menaces. He appears to acknowledge that he has no lawful basis for his demands (*"if the law can't provide me with a just remedy, then I guess I'll just have to fight dirty…"*). It seems unlikely that he could believe there are reasonable grounds for making the demands or that the use of these menaces is a proper way of reinforcing them. It follows that the Defendant's Article 10 rights are unlikely to attract any real weight, and unlikely to stand in the way of a final injunction being granted.

49. Fifth, the Claimant's evidence (so far uncontradicted except by the contents of the Defendant's communications themselves) is that the allegations the Defendant has made to him and threatens to make to third parties are largely false. On present evidence, that is likely to be established at trial, and will add to the oppressive nature of the Defendant's conduct. Even where the allegations are or may be true, it is likely the Court will find that they are being advanced for the wholly improper purpose of blackmailing the Claimant and are therefore, again, oppressive and unacceptable.

50. Sixth, there is a strong case that the Defendant knows, or at least ought to know, that his conduct amounts to harassment. Any reasonable person in the Defendant's position and privy to the same information is likely to have recognised the harassing nature of his actual and threatened conduct.

51. Seventh, insofar as the Claimant may need to establish that he has suffered (or will suffer) alarm and distress, the Claimant's First Witness Statement already attests to this. He says that he is genuinely frightened of the actions the Defendant could take to harm him and the Business.

52. Given that the Defendant was absent and unrepresented, I have considered carefully what he might be able to say in response to these points.

53. First, the Defendant might be able to argue that his actions relied on in the Particulars of Claim (the sending of the First Email, the WhatsApp Message and the Second Email) do not add up to a "course of conduct" because, variously, the Claimant was outside the jurisdiction when he initially read the First Email; the First Email and WhatsApp Message are in reality a single piece of conduct; and/or the Second Email is not sufficiently targeted at the Claimant himself. I say nothing more about those arguments because, in any event, they will not prevent a Court from finding, prospectively, that the Defendant threatens and intends to pursue a course of conduct if left unrestrained, even if no course of conduct can yet be proved.

54. Second, the Defendant may seek to argue that he is targeting the Business, not the Claimant. That argument is unlikely to find favour because, as I have explained, he appears to be making threats against the Business in order to put pressure on the Claimant, and he also appears to make threats to publish allegations about the Claimant's personal character and conduct, and to inflict physical violence on the Claimant.

55. Third, I note that the First Email contains the line: *"Now I won't be defaming you…just merely attaching links to websites that are freely available in the public domain. The recipients of these emails can make of them what they will. I'll not be held liable for their own conclusions and I'm not the author of these articles and transcripts, so forget about the law…"*. I am doubtful that the Defendant could in fact write the emails he envisages without himself making the insinuation that the Claimant and the Business are disreputable in some way. More to the point, if the Defendant were to argue (as this passage suggests he might) that he cannot be liable for harassment by drawing attention to public domain material, that would be plainly wrong as a matter of law: see *Hayden* principle (x) above.

56. Third, the Defendant may seek to argue that he is pursuing his course of conduct "for the purpose of preventing or detecting crime" (PfHA s1(3)(a)). That requires the Court to consider the Defendant's subjective state of mind, but a defendant who subjectively believes that they are acting to prevent or detect crime will not make out the defence if their belief is irrational. The requirement of rationality includes a requirement to act in good faith: see *Hayes v Willoughby* [2013] 1 WLR 935 at [14]-[16]. Even assuming that the Defendant subjectively believes he is acting to prevent or detect crime, it is unlikely, on present information, that the Court will accept that he went through the thought processes necessary to make that belief a rational one. It is much more likely that the Court will find the Defendant to have been acting in bad faith in order to extract money from the Claimant or the Business.

57. Fourth, the Defendant may seek to argue that his conduct is reasonable in the particular circumstances (PfHA s3(3)(c)). That is an objective test and, on the evidence so far available, I consider it unlikely that he would be able to satisfy the Court that his conduct and threatened conduct have a reasonable basis.

58. Lastly, I turn to consider whether the HRA 1998 s.12(3) test that I have been addressing is the correct one, or whether I should instead apply the *Bonnard v Perryman* test. It is

true that the course of conduct the Defendant is threatening includes the publication of material to third parties that will damage the reputation of the Claimant and the Business. The Claimant says that most of the Defendant's allegations are false and candidly accepts in his First Witness Statement that he is concerned about his reputation and that of the Business.

59. Nevertheless, I do not think that protection of reputation can be said to be the "nub" of the application for an injunction. First, the principal purpose of the Claimant, it seems, is to prevent the Defendant from making demands with menaces. The fact that those menaces include threats to publish defamatory material is somewhat incidental. Second, the Defendant's objectionable conduct goes well beyond threatening to publish defamatory allegations. It includes threatening physical violence, engaging in covert recording and surveillance and removing documents and emails from the Business without authority. The relief sought (and so far granted) is commensurately broad. Only the third limb of the injunction concerns publication to third parties. The first two limbs prohibit the Defendant from physically approaching or communicating directly with the Claimant (and specified others); one of the Mandatory Orders is for return of information the Defendant has obtained from the Business. Accordingly, while the application may be motivated in part by a concern to avoid reputational harm, I do not consider that is its sole or main purpose.

60. I would add that, if I am wrong about that, and *Bonnard v Perryman* does apply, then I am also satisfied that the application meets that more exacting standard. As things stand, more than a month after the injunction was first granted, the Defendant has not filed any evidence purporting to substantiate his allegations. He has written to the Court in terms that implicitly repeat some of his allegations, but that falls far short of putting forward some credible basis for them.

61. The threshold test for an injunction having been overcome, there are no reasons apparent to me for refusing to continue the injunction as a matter of discretion. On the contrary, everything argues for restraining the Defendant until this claim can be tried.

Terms of the injunction

62. I made a small adjustment to the injunction itself to make clear that it does not prevent the Defendant from discussing his case with any legal advisers he instructs in these proceedings. I also raised with counsel whether there should be a proviso permitting the Defendant to communicate with the police or other law enforcement bodies. In *Crawford v Jenkins* [2016] QB 231 the Court of Appeal held that the "witness immunity" rule applies in harassment, such that the course of conduct cannot be based on a report to the police. That seems to raise a question as to whether it is appropriate to restrain such conduct in an injunction founded on the PfHA. However, given the sensitivities in this case, I considered that it would be wrong to introduce a proviso without giving the Claimant an opportunity to address the point more fully in argument. The point will need consideration before any final injunction is made.

63. As to the Mandatory Orders, I cannot, at this stage in the proceedings, go behind the Defendant's witness statement in which he avers that he has not communicated to any third party about the Claimant, his family, his business or staff and that there are therefore no copies of such communications to provide to the Claimant's solicitors. If that statement turns out to be false (as the Claimant suggests it must be), then that will

be a serious matter but, for the time being, I have simply reminded the Defendant of his obligation under Mandatory Order (a).

64. The reasons the Defendant has given for non-compliance with Mandatory Order (b) (whistleblowing; counterclaim) are not good reasons in law. As Saini J recently said, *"It is well-established that the Courts will not sanction employees helping themselves to, or retaining, their employer's documents for the purposes of future litigation, or anticipated regulatory issues or protected disclosures, or even taking legal advice"*: *Payone GmbH v Logo* [2024] EWHC 981 (KB) at [42]. Accordingly, he must now comply with Mandatory Order (b), or put forward some valid legal reason for not doing so.

Costs

65. The Claimant asked to be awarded his costs of the interim injunction application, including the costs of the 3 hearings that have taken place. I refused. The appropriate order is "costs reserved". In *Melford Capital Partners (Holdings) LLP v Wingfield Digby* [2021] 1 WLR 1553 the Court of Appeal emphasised that this is the normal approach unless there are special factors. There are no special factors here. Like the Judge in *Melford*, I have not had to determine the underlying merits of the claim (and neither did Steyn J or Kerr J), I have simply made a prediction as to the likely outcome at trial, based on the evidence presently available. I have declined to make a finding that the Defendant has been dishonest about his reasons for non-attendance. It cannot be said with certainty at this stage that he has unnecessarily driven up costs.

66. The Claimant refers me to *Koza Ltd v Koza Altin Isletmeleri As* [2020] EWCA Civ 1263. It does not assist him. *Koza* concerned the costs of an appeal against an interim injunction, not the first-instance application, and the injunction was not of the "holding of the ring" type because it disposed of certain issues that would not need to be revisited at trial: see [3]-[4]. Here, the Court has not yet made any final determination of any issues. It remains for the Claimant to prove his case in full at trial, or to obtain default judgment.

Application for default judgment

67. The Claimant says he has also issued an application for default judgment and for a final injunction, although no one was able to show me a sealed copy of the Application Notice. A copy (unsealed, I think) was served on the Defendant on 8 July 2024.

68. I was not prepared to deal with this application. Even assuming it has been properly issued, I very much doubt that the Defendant will have appreciated that the Claimant was seeking a final order at the 12 July 2024 hearing. The fact that he did not attend what he understood to be a return date hearing concerning the interim injunction does not allow me to infer that he has abandoned all interest in the proceedings. On the contrary, his correspondence suggests that he wants to contest the claim. He may have relevant submissions to make on the terms of any final injunction even if (as the case may well be) he is now debarred from defending the claim. Accordingly, the Claimant will have to obtain a hearing date in the usual way. The Claimant rightly acknowledges that, in the circumstances of this case, the default judgment application should be made on notice to the Defendant.