Neutral Citation Number: [2024] EWHC 2586 (KB)

Claim No: KB-2024-000960

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

Royal Courts of Justice
Strand, London
WC2A 2LL

Date: Thursday, 10th October 2024

Before:

MRS. JUSTICE HILL

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Between:

(1) TITAN WEALTH HOLDINGS LIMITED **(2) TITAN SETTLEMENT & CUSTODY LIMITED (formerly known as GLOBAL PRIME PARTNERS LIMITED)** **(3) GRETCHEN ROBERTS** **(4) TIFFANY ROBERTS**	**Applicant**
- and -	
MARIAN ATINUKE OKUNOLA	**Respondent**

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ROBIN LÖÖF and **MARCUS FIELD** (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) appeared for the **Claimants**

THE DEFENDANT appeared **In Person**

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APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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MRS. JUSTICE HILL :

1. This is a claim for breach confidence, breach of contract and harassment brought by Titan Wealth Holdings Limited and related Claimants against Marian Okunola, a former employee of theirs.

2. This is my second judgment on a preliminary matter before the evidence is called in the trial. It relates to the Claimants' application made by way of application notice dated 8th October 2024. By that application the Claimants seek an order permitting them to rely on the witness statement of Michael Fullalove, Chief Executive Officer of the Second Claimant, dated 7th October 2024, which I will refer to as Fullalove 4. By order of Master Gidden dated 19th July 2024, the Claimants were required to serve all their supplementary witness statements for trial by 18th September 2024. Accordingly, in order to rely on Fullalove 4, the Claimants require relief from sanctions under CPR 3.9.

3. In deciding whether to grant relief from sanctions, the factors set out in *Denton v White* [2014] 1 WLR 3926 fall to be considered, namely, (i) the seriousness and significance of the breach in respect of which relief from sanctions is sought; (ii) why the failure or default occurred; and (iii) in all the circumstances of the case, including whether the breach has prevented the efficient and proportionate conduct of the litigation, whether relief should be granted.

4. The drafting of Fullalove 4 and thus the application have proved necessary because on 2nd October 2024, the Defendant wrote to the Claimants' solicitors asserting that they had no authority to act on behalf of the First and Second Claimants. This assertion was based on documentation that had been added to the Companies House website on 30th September 2024 indicating that a man named Damian Sharpe resigned as

director of the first claimant on 30th November 2023, but was reappointed as a director on 11th September 2024. Evidence on this issue is relevant because one aspect of the Defendant's case is that the Claimants' solicitors have no authority to act on behalf of the First claimant.

5. Mr Sharp has been Chief Operating Officer of the First Claimant without interruption since 1st July 2021 and remains in that role. The Claimants' case is that in that capacity, he is authorised to take operational decisions on behalf of the first claimant. His status as a director, they contend, has no bearing on his authority to instruct the Claimants' solicitors.

6. Upon further investigation, the Claimants accepted that the 30th September 2024 information rendered an earlier witness statement from Mr Fullalove about these issues inaccurate. Fullalove 4 seeks to correct the position in the manner I have set out.

7. If Fullalove 4 is not admitted, counsel for the Claimants will understandably seek permission to ask Mr Fullalove questions of clarification on this issue when he gives evidence in chief. Fullalove 4 also has various relevant documents exhibited to it, such that oral evidence from Mr Fullalove alone on this issue would not suffice for the Claimants' purposes. Moreover, if Fullalove 4 is not admitted, his account will not be before the court in advance of the Defendant inevitably seeking to cross-examine him in relation to the Companies House documents. It is likely to be beneficial to both the Defendant and the court to have had Mr Fullalove's evidence on these issues beforehand.

8. In written submissions lodged before the trial, the Defendant had suggested that she opposed the admission of Fullalove 4.

9. She contended that Mr Fullalove did not have authority to give this statement. However, he is the Chief Executive Officer of the Second Claimant with delegated authority from the First. In any event whether or not he had authority to give the statement is a matter that goes to its weight rather than its admissibility.

10. The Defendant also argued that Mr Sharp did not have authority to engage the Claimants' solicitors. If anything, that was an attack on the integrity of those solicitors and is not relevant to the admissibility of Fullalove 4.

11. Finally, the Defendant made the point that Mr Sharp is not before the court as a witness. She may well rely on that in terms of merits of the claim, but again that does not affect the admissibility of Fullalove 4.

12. In fact, in her oral submissions on the afternoon of 9th October 2024, the Defendant did not appear to press her opposition to the admissibility of Fullalove 4. She agreed that there was no prejudice to her by the statement being admitted. She was more concerned about the prejudice she contended signing the statement had caused Mr Fullalove: she maintained that this was a dishonest witness statement. However, she accepted that that was a matter that went to the weight of the statement rather than its admissibility.

13. The Defendant rightly raised the fact that the Claimants need to satisfy the legal framework in relation to relief from sanctions in order to secure the admissibility of Fullalove 4.

14. In my judgment, application of all the *Denton* criteria justifies the grant of relief from sanctions. There was a very good reason for failing to serve this witness statement within the timescale set by Master Gidden, namely the need for it did not become apparent until 2nd October 2024. The Claimants acted very promptly thereafter. The Defendant has suffered no prejudice by it being admitted at trial. She will be fully able to cross-examine Mr Fullalove on trial about these matters. Accordingly, there was not a serious or significant failing and the failing has not prevented the efficient and proportionate conduct of the litigation. Indeed, having this witness statement before the court is likely to save time and thus render the trial more efficient and the time spent on this issue more proportionate.

15. In all the circumstances of the case, it would be appropriate to admit this evidence. For these reasons, the Claimants' application is granted.

(After further submissions)

16. This is a claim for breach of confidence, breach of contract and harassment brought by Titan Wealth Holdings Limited and related Claimants against Marian Okunola, a former employee of theirs. The Third and Fourth Claimants, Gretchen Roberts and Tiffany Roberts, are respectively the Group Human Resources Director and the Group Compliance Director for the first claimant. They bring a claim of harassment arising out of, in part, correspondence sent to them by the Defendant which is said to amount to harassment, in part due to its grossly offensive and demeaning content.

17. This is my third judgment on a preliminary matter before the evidence is called in the trial. It relates to the Claimants' application made by way of an application notice dated 12th August 2024. By that application they seek an order that (1) pursuant to

CPR 32.1(3), the Defendant is prohibited from cross-examining the Third and Fourth Claimants on an irrelevant issue, namely, the truth of the assertions made in the correspondence said to constitute harassment against them, and (2) pursuant to CPR PD 1A, paragraph 10, they be permitted to give evidence from behind a screen. These are the same special measures as were granted by Chamberlain J at the contempt of court hearing on 20th June 2024.

18. In order to determine the application, I have considered both parties' written and oral submissions, the ruling from Chamberlain J's hearing on 20th June 2024, the third witness statement of Yasseen Gailani, dated 21st August 2024, and the second and third witness statements from Gretchen Roberts, dated 12th June and 12th August 2024, and the second and third witness statements of Tiffany Roberts of the same date.

19. Prior to the hearing, the Defendant set out her position on the issue of special measures in written submissions dated 16th August 2024. I have considered those as well as the earlier written submissions she made ahead of the hearing before Chamberlain J dated 13th June 2024. She has also provided two lists of proposed questions for the Third and Fourth Claimants that I have looked at. She initially suggested that she would not oppose the application, but then indicated that her position was conditional upon the suggestion that the questions she had drafted be put by counsel for the Third and Fourth Claimants. In oral submissions today, she has objected to the use of screens, but broadly continued to maintain that it might be appropriate for someone other than her to ask the questions.

20. I deal first with the application for an order restricting cross-examination. The court has a power under CPR 32.1(3) to limit cross-examination. This is effectively part of

a wider power under CPR 32.1(1)(a) to control the issues on which the court requires evidence.

21. In my judgment, the Claimants are right to contend that the truth or otherwise of the factual assertions made by the Defendant in the correspondence said to constitute harassment is not relevant to the determination of the claim. This is for two reasons.

22. First, the messages in question fall into the category of conduct which could never be justified with reference to the content of the message sought to be conveyed such that proof of falsity is not required. I apply in that regard *Law Society v Kordowski* [2011] EWHC 3185 QB at [133].

23. Second, those messages are offensive and demeaning even if reasonable people are unlikely to be believe them: see *Pattinson v Winsor* [2024] EWHC 230 KB at [24].

24. This means that cross-examination on this issue would not legitimately assist the Defendant in defending the claim of harassment.

25. Moreover, the Defendant's recent conduct, including the tone of some of her correspondence, certain aspects of how she has responded to the application, and her comments in court on the first day of the hearing yesterday lead me to have concerns that she would use the cross-examination of the Third and Fourth Claimants to harass them (further, on their case).

26. For those reasons I grant the first part of the application.

27. In terms of the format of the cross-examination I have given some consideration to whether, albeit that it would not be appropriate for counsel to the Claimants to ask the Defendant's questions, it might be appropriate for me to do so. However, the

Defendant has indicated that this would stifle her ability to ask follow-up questions. I understand that. I therefore conclude that she should be permitted to ask the questions.

28. That said, a transcript of the contempt hearing is available, and I am concerned to avoid the risk of repetition. It is important that the questions of these two witnesses remain focused on what is necessary for the trial, bearing in mind that their answers given on the previous occasion are before me. I will keep a careful eye on the cross-examination to ensure that it is consistent with the overriding objective and the court's powers under CPR 32.1(3) and 32.1(1)(a), to which I already referred.

29. I turn now to the application for screens.

30. Under CPR PD1A, the court must consider whether, in the furtherance of the overriding objective, it would be appropriate to give special measures directions so as to seek to ensure the full participation of vulnerable parties and/or witnesses in proceedings before it. "Vulnerability" is defined under CPR PD1A, paragraph 3, as "a characteristic which may adversely affect participation in proceedings or the giving of evidence". Paragraph 4 sets out a non-exhaustive list of factors which may cause such vulnerability in a party or a witness. This is the appropriate approach to apply to civil litigation in the High Court. I was therefore not assisted by the Defendant's references in her written submissions to the approach taken in criminal cases.

31. Having read both of their witness statements, I am satisfied that the Third and Fourth Claimants are vulnerable by virtue, in particular, of the impact on them of the subject-matter of, or facts relevant to, the case, namely, the correspondence they received from the Defendant. I am also satisfied that they are vulnerable by virtue of their

relationship with the Defendant, which has undoubtedly already and continues to cause them stress and anxiety. This engages CPR PD1A, paragraphs 4(e) and (f).

32. I can see no basis for the Defendant's assertion in her written submissions that these two witnesses are claiming that they are intimidated by her because she is black and therefore violent and of disrepute. Most of her other submissions denying that they are vulnerable relate to the criminal law framework which, as I have said, is not relevant. In any event, these and other points were considered and rejected in the context of the first special measures application.

33. I accept the evidence from both the Third and Fourth Claimants to the effect that they were greatly assisted by the special measures in place at the 20th June 2024 hearing. This, as counsel for the Claimants contended, is an unusual situation where witnesses can already speak about the positive impact that special measures have had on their ability to give evidence. This, together with the Defendant's correspondence to the Third and Fourth Claimants' legal representatives, containing clear threats to them, provides further support for the need for special measures.

34. In her written submissions, the Defendant has suggested that the Third and Fourth Claimants "performed" in court by exaggerating their emotional responses to elicit unwarranted sympathy and that they have lied about her conduct during cross-examination at the earlier hearing. Neither of these were tenable propositions for the reasons given in Mr Gailani's statement at paragraphs 16-21, and in particular because of the observations of Chamberlain J at the earlier hearing.

35. The Defendant argued in oral submissions that she would like to see her accusers and not have screens. That, of course, is understandable, but that general proposition is

always subject to the specific provisions to the effect that screens can be appropriate in some cases. The Defendant has not suggested that permitting the Third and Fourth Claimants to give evidence from behind a screen will materially inhibit her conduct of her defence.

36. The Defendant has referred to concerns about her reputation being tarnished if special measures were ordered. Special measures are ordered to assist witnesses in giving their best evidence. It is understood in the criminal courts, for example, that if special measures are ordered in relation to the alleged victim of a crime, that should not be held against the Defendant. The two are separate issues even if, on the facts of this case, some of the evidence underlying the application for special measures is the same as that used in the trial.

37. The remainder of the Defendant's written submissions, although described as relating to special measures, largely addressed other issues. These included matters relating to the merits such as whether she had in fact stolen confidential information, and matters relating to other applications, such as the Claimants' 25th July 2024 application for a third party debt order.

38. In my judgment screens for these two witnesses are appropriate.

39. Accordingly I consider it necessary and appropriate to grant both special measures sought by the Claimants. Their application is granted.

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