Neutral Citation Number: [2025] EWHC 403 (KB)

Case No: KB-2022-004547

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/02/2025

Before :

DEPUTY HIGH COURT JUDGE SUSIE ALEGRE

- -

Between :

FRANKLIN WILLIAM RZUCEK **Claimant**

- and –

ALAN VINNICOMBE **Defendant**

- -
- -

Gervase de Wilde (instructed by **Cohen Davis Solicitors)** for the **Claimant**
Alan Vinnicombe representing himself

Hearing dates: **13 February 2025**

- -

Judgment Approved by the court for handing down (subject to editorial corrections)

Susie Alegre:

Background

1. This is a claim for defamation and harassment brought by Franklin William Rzucek ("the Claimant") against Alan Vinnicombe ("the Defendant") and a counterclaim for harassment brought by the Defendant. The hearing before me concerned the application by the Claimant to strike out the defence and the counterclaim and the application by the Defendant for security for costs.

2. In summary, the case arises out of content distributed by the Defendant across various media platforms, notably including his YouTube channel "Armchair Detective BLUE." The Defendant is accused of promoting unfounded conspiracy theories and making allegations concerning the tragic events known as "the Watts Case," involving the murder of the Claimant's sister, Shannan Watts, her daughters, and her unborn child. It is also claimed that he published defamatory statements indicating that the Claimant's crowdfunding campaign to fund this claim was in some way fraudulent and/or dishonest.

3. In turn, the Defendant counterclaims that the Claimant has coordinated a campaign of harassment online and in person against him.

4. The Claimant is a US citizen who lives in North Carolina with his parents. He makes a small amount of money from a YouTube channel.

5. The Defendant is a UK citizen who lives in the UK. He operated a YouTube channel called "Armchair Detective BLUE" which was described as focusing on "True Crime and other Mysteries" with 79,100 subscribers as at 10 March 2023. The YouTube channel has now been closed down and the relevant videos are no longer available online.

6. The Claimant was represented before me by Mr de Wilde, acting pro bono and Mr Vinnicombe appeared unrepresented.

Procedural History

7. The Claimant served a detailed Particulars of Claim dated 10 March 2023 ("the POC"), setting out his claims under the Protection from Harassment Act 1997 ("the PHA") and in defamation, relating to publications made by the Defendant on, and in relation to, the Armchair Detective BLUE channel.

8. The Defendant has served several documents in his attempt to file a defence that is compliant with the procedural rules. The first Defence was dated 3rd April 2023, an amended Defence was dated 8 August 2023. Due to the inadequacy of those documents, an Unless Order was issued by Master Gidden on 13 December 2023 allowing the Defendant a last chance to provide an effective Defence. The Defendant submitted a re-amended Defence dated 28 January 2024. Master Gidden issued a further Unless Order in what he described as "the last chance saloon" on 19 April 2024 allowing the Defendant one last opportunity to provide a compliant defence before strike out. In part, it seems, that last chance was afforded because of the Defendant's commitment to getting legal advice to help him prepare a compliant defence. The Defendant made an

application for security for costs shortly after that hearing on 8 May 2024 and produced a re-re-amended Defence dated 15 May 2024. The Claimant then made an application dated 31 May 2024 to strike out the Defendant's Defence and Counterclaim and to enter judgment for the Claimant.

9. This judgment relates to:

1. the Claimant's application to strike out the Defendant's defence and enter judgment for the Claimant further to the Unless Order as well as the Claimant's application to strike out the Defendant's counterclaim in harassment and dismiss the counterclaim, and

2. the Defendant's application for security for costs.

I will deal firstly with the application to strike out and then the application for security for costs.

Application to Strike out the Defence and Counterclaim

Law

10. CPR r.16.5 provides:

"Content of defence 16.5

(1) In the defence, the defendant must deal with every allegation in the particulars of claim, stating—

(a) which of the allegations are denied;

(b) which allegations they are unable to admit or deny, but which they require the claimant to prove; and

(c) which allegations they admit.

(2) Where the defendant denies an allegation—

(a) they must state their reasons for doing so; and

(b) if they intend to put forward a different version of events from that given by the claimant, they must state their own version."

11. CPR PD53B provides:

"2.1 Statements of case should be confined to the information necessary to inform the other party of the nature of the case they have to meet. Such information should be set out concisely and in a manner proportionate to the subject matter of the claim

(Part 16 and the accompanying practice direction contain requirements for the contents of statements of case.)

…

4.3 Where a defendant relies on the defence under section 2 of the Defamation Act 2013 that the imputation conveyed by the statement complained of is substantially true, they must—

(1) specify the imputation they contend is substantially true; and

(2) give details of the matters on which they rely in support of that contention."

12. CPR r.3.4 provides:

"Power to strike out a statement of case 3.4 -

(1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.

(2) The court may strike out a statement of case if it appears to the court—

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or court order."

13. CPR r.3.1(3) provides:

"(3) When the court makes an order, it may –

(a) make it subject to conditions, including a condition to pay a sum of money into court; and

(b) specify the consequence of failure to comply with the order or a condition."

14. The commentary on the rule in the White Book 2024 at 3.4.19 (pg.115) says:

"Striking out sanction effective without need for further order ("unless" orders) Rule 3.1(3) states that, when the court makes an order, it may (a) make it subject to conditions, and (b) specify the consequence of failure to comply with the order or a condition. This provision and r.3.4(2)(c) (when put together) confirm that the court may make a conditional order in the form of an order stating that, unless by a particular date a party complies with a procedural order made by the court (e.g. a disclosure order, or an order to give security for costs), their statement of claim shall be struck out and their claim dismissed. (The existence of such power is assumed in r.3.5 and r.3.8, see further below.) The consequence (i.e. the striking out and dismissal sanctions) follows automatically upon the party's failure to comply with the condition, without any further order of the court. In PD 3A (Striking Out a Statement of Case) (supplementing r.3.4) it is stated in para.1.9 (inserted in October 2005) that, where an order (or a rule or a practice direction) states that a statement of case shall be struck out or will be struck out or dismissed, this means that the striking out or dismissal "will be automatic and that no further order of the court will be required" (see para.3APD.1). Obviously,

the automatic imposing of the striking out and dismissal sanction can have very serious consequences for the defaulting party. In Marcan Shipping (London) Ltd v Kefalas [2007] EWCA Civ 463; [2007] 1 W.L.R. 1864; [2007] 3 All E.R. 365, CA, the Court of Appeal stressed that, in making a conditional or "unless" order containing such sanction, a judge should consider carefully whether that sanction is appropriate in all the circumstances of the case.

Where an unless order has had this effect, the court retains jurisdiction to grant the defaulting party relief (usually in the form of an extension of time for complying) if that party makes an application under r.3.8 (in which event the court will consider all the circumstances, in particular, those listed in r.3.9)."

15. CPR r.3.5 provides:

"3.5(1) This rule applies where—

(a) the court makes an order which includes a term that the statement of case of a party shall be struck out if the party does not comply with the order; and

(b) the party against whom the order was made does not comply with it.

...

(5) A party must make an application in accordance with Part 23 if they wish to obtain judgment under this rule in a case to which paragraph (2) does not apply."

Arguments

16. The arguments before me were brief and I will summarise them here.

17. Mr de Wilde, for the Claimant, argues that the latest Defence provided by the Defendant following the 19 April Order of Master Gidden still fails to comply with the relevant procedural rules. He says that the Defence is defective in a number of ways. Essentially it fails to address the Claimant's case properly. He highlighted a number of places in the Defence where the Claimant says that he "cannot comment" or is "unable to clarify" because the videos are no longer accessible. In other places, the Defence includes "formulaic - and irrelevant" statements based on the wording of the Defamation Act 2013. He points to places where the Defence appears to provide Defamation Act defences of truth and honest opinion in relation to the harassment claim without engaging with the fact that, under the Prevention of Harassment Act 1997, the truth or alleged truth of the published information is not determinative (***Hayden v Dickenson*** [2020] EWHC 3291 (QB) (Nicklin J) at [40(xi)].

18. In relation to the Defendant's Counterclaim, Mr de Wilde says that, consisting of two sentences in an application form, it fails to identify the basic constituent elements of the allegedly harassing course of conduct complained of by the Defendant and discloses no reasonable grounds for the counterclaim brought. It should therefore be struck out and the counterclaim dismissed.

19. Mr Vinnicombe appeared before me and accepted that both the Defence and the Counterclaim were not compliant with the procedural rules. He said that this is because he has been unable to get legal advice and representation, in part because of the costs

risks that he seeks to address with his application for security for costs. He explained the challenges for him to put together a technically compliant defence as a lay person with dyslexia and said that the latest Defence was his best effort. He submitted that the Claimant should not win the claim on a mere technicality.

Analysis and Conclusion

20. Having considered the latest Defence dated 15th May 2024, it is clear that, despite the unequivocal indication given by Master Gidden that this was his last chance, the Defendant has not provided a defence that complies with the procedural rules set out in CPR 16.5 and CPR PD53B. Assertions that the Defendant will provide "a different version of events" without clarifying what that version is, do not provide an adequate response to the particulars of claim. The latest Defence is essentially a mishmash of legal wording and vague assertions of unspecified "evidence" or alternative facts. It is clearly in breach of the Unless Order of 19 April 2024 and Mr Vinnicombe does not really contest that.

21. Compliance with the rules on pleadings is not a mere "technicality" - it is vital to the fairness of proceedings allowing both sides to understand the case they need to answer. Without a compliant defence, it is impossible for the Claimant to reply or, ultimately, for a court to come to a considered conclusion on proceedings.

22. I do not underestimate the challenges for a litigant in person like the Defendant to engage with complex litigation, however the law does not exempt litigants in person from compliance with the rules. Mr Vinnicombe has been given several chances to address the deficiencies in his Defence and Master Gidden's warning that he was in the "last chance saloon" almost a year ago could not have been clearer. Mr Vinnicombe has explained that he has not paid for legal representation because of the absence of security for costs, but that explanation does not change the fact that he has not provided a compliant Defence 14 months after the original Unless Order and 10 months after he was given one last chance to do so.

23. Litigation of this nature is complex and stressful for all parties involved. It is clear, at this stage, that a compliant defence has not been provided despite multiple opportunities and Mr Vinnicombe accepts that this is the case. In the circumstances, there has been no progression and there is no sign of progression due to the failure of the Defendant to comply with procedural rules and ultimately to take the opportunity afforded by the court in granting two Unless Orders to allow him to address the issues. For these reasons the Defence is struck out under CPR r.3.4(2) and judgment entered for the Claimant.

24. I have also considered the counterclaim, such as it is. An allegation of harassment in the form provided in the application with no specificity discloses no real grounds for bringing the counterclaim. Mr Vinnicombe accepts that this is the case and, while stating that he has been the victim of coordinated harassment, did not, before me, give any indication that a counterclaim compliant with the rules would be forthcoming. The timing of the counterclaim, late in the proceedings and after the Unless Order of April 2024 gives cause to consider that the counterclaim is a vain attempt to muddy the waters and stall proceedings in the absence of a procedurally compliant defence to the claim. In the absence of any real grounds evidenced for bringing the counterclaim, I also strike out the counterclaim.

Application for Security for Costs

25. The Defendant made an application for security for costs in the region of £25,000-£50,000 on 8 May 2024, shortly after the last hearing before Master Gidden. In her order of 17 October 2024, Steyn J decided that the application for security for costs should be decided along with the application for strike out which was listed before me on 13th February 2025.

Law

26. CPR r.25.12 provides:

"Security for costs 25.12-

(1) A defendant to any claim may apply under this section of this Part for security for his costs of the proceedings.

(2) An application for security for costs must be supported by written evidence.

(3) Where the court makes an order for security for costs, it will -

(a) determine the amount of security; and

(b) direct -

(i) the manner in which; and

(ii) the time within which the security must be given."

27. CPR r.25.13 provides:

"Conditions to be satisfied 25.13-

(1) The court may make an order for security for costs under rule 25.12 if -

(a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

(b)

(i) one or more of the conditions in paragraph (2) applies, or

(ii) an enactment permits the court to require security for costs.

(2) The conditions are -

(a) the claimant is -

(i) resident out of the jurisdiction; but

(ii) not resident in a State bound by the 2005 Hague Convention, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982;..."

Arguments

28. It is common ground that the conditions for an order for security for costs are met in that the Claimant is resident out of the jurisdiction and is impecunious and that the Court has discretion to grant such an order if it would be just to do so.

29. Mr de Wilde argues, in essence, that to order security for costs would be unjust on the facts of this case at this stage of the proceedings. This is because it would effectively stifle the claim as the Claimant would be unable to continue with the proceedings. So far, the claim has been funded in part by crowdfunding and, latterly, the Claimant's representatives have continued to act on a *pro bono* basis. He suggests that the Defendant's impecuniosity has, in part, been brought about by the Defendant's own conduct. He also points to the timing of the Security Application noting that it is an issue first raised in a letter sent by the Defendant's then solicitors on 6 April 2023 but with no application being made until after Master Gidden's second Unless Order over a year later.

30. Mr Vinnicombe, for his part, says that his ability to defend the claim being brought by an impecunious Claimant outside the jurisdiction has been stifled because he does not have security for costs. He says that, without a security for costs order, the Claimant has nothing to lose while he cannot take the risk of incurring significant costs to defend his case properly and in a compliant manner. As to the timing of the application, he says he made the Security Application shortly after the hearing with Master Gidden and had hoped for a decision on security for costs before the strike out hearing to allow him to invest in professional legal advice for that hearing. The Defendant says that the reason for his failure to provide a compliant defence prepared professionally is inextricably linked to the costs risks he is exposed to. In essence, he says that, it would be unjust not to make an order for security for costs in a situation where the Claimant has "nothing to lose".

Analysis

31. The issue of costs is an important aspect of proceedings of this nature. The complexity of the proceedings and the significant costs of representation can make it difficult for parties to bring claims or defend themselves where funds are an issue. Costs risks on either side can stifle the ability of a party to participate effectively in proceedings. In this case, neither party has significant resources. The Claimant was funded through crowdfunding initially and is represented before me by lawyers now acting *pro bono*. The Defendant, a pensioner, is a litigant in person with limited resources. An order for security for costs may have the effect of stifling the claimant's ability to pursue the claim, but without security for costs, the Defendant's ability to defend the claim is equally curtailed. The Court clearly has discretion to make an order for security of costs in these proceedings but the question for me is whether, in all the circumstances of the case it is just to do so.

32. 32. In considering the Claimant's impecuniosity, Mr de Wilde submitted that I should consider the impact of the Defendant's actions on the Claimant's income (with reference to ***Spy Academy Ltd v Sakar International Inc*** [2009]EWCA Civ 985 (Sir Simon Tuckey, Sedley LJ, at [14]), in particular his income derived from his YouTube Channel. I am not persuaded that the drop in income evidenced is clearly linked to or

caused by the actions of the Defendant, nor that it makes a material difference to the Claimant's ability to meet costs in this case.

33. When considering impecuniosity in relation to a security for costs order and the potentially stifling effect, it is also relevant to consider the Claimant's ability to obtain funds elsewhere (see Peter Gibson LJ in ***Keary Developments Ltd v Tarmac Construction Ltd*** [1995] 3 All E.R. 534 (***Keary***)). As Lord Wilson in ***Goldtrail Travel Ltd v Aydin*** [2017] UKSC 57; [2017] 1 W.L.R. 3014 put it at [17]:

"It is clear that, even when the appellant appears to have no realisable assets of its own with which to satisfy it, a condition for payment will not stifle its appeal if it can raise the required sum. As Brandon LJ said in the Court of Appeal in the ***Yorke Motors*** *case, cited with approval by Lord Diplock at 449H:*

> *"The fact that the man has no capital of his own does not mean that he cannot raise any capital; he may have friends, he may have business associates, he may have relatives, all of whom can help him in his hour of need.""*

34. It is for the Claimant to demonstrate that the effect would be more likely than not stifling (***Al-Koronky v Time Life Entertainment Group Ltd*** [2005] EWHC 1688 (QB) Eady J at [31]). But I have not been provided with any evidence as to other sources of funds such as the Claimant's parents (who he lives with) or supporters through further crowdfunding. In the absence of evidence, I am unable to conclude that the Claimant could not comply with a security for costs order if one were to be made or that it would necessarily stifle the claim.

35. While a Court should be slow to consider the merits in relation to an application for security for costs (***Keary***), Mr de Wilde argues that this is a case where conclusions could be drawn on the likely outcome of proceedings without entering into the kind of detailed merits of the claim which the authorities warn against. This is because, despite repeated opportunities to enter a defence, the Defendant has failed to comply with the relevant procedural rules or to plead a defence which gives reasonable grounds for defending a claim. Mr Vinnicombe says, however, that the lack of a defence is down to his lack of representation and his inability to craft such a defence rather than the absence of reasonable grounds in fact. It is, essentially a "chicken and egg" argument.

36. While I am sympathetic to the difficulties Mr Vinnicombe faces representing himself, I note that he was originally represented in these proceedings and he has had some limited access to legal advice throughout the proceedings, and yet, after two years of proceedings and four attempts to file a defence, there are still no reasonable grounds submitted for defending the claim. In these circumstances, I am inclined to find that there is a high likelihood that this claim will succeed and therefore the merits are relevant in considering whether to make an order for security for costs in this case.

37. It is the timing of the application which, taken together with the likely merits of the claim, tips the balance of fairness in this case. As per Ward LJ in ***Vedatech Corp v Crystal Decisions (UK) Ltd (formerly Seagate Software IMG Ltd) (Appeal against Security for Costs)*** [2002] EWCA Civ 356 at [21], the timing of an application for security for costs will affect the proportionality of such an order being made so that an application at a late stage could be considered unjust.

38. While Mr Vinnicombe was unrepresented before me, he was represented by solicitors earlier in the proceedings. They first raised the issue of security for costs in a letter to the Claimant's solicitors on 6 April 2023 but the application was not made until the 8 May 2024 over a year later and after three non-compliant Defences had been submitted along with two Unless Orders being made. This procedural history has delayed the proceedings and added significantly to the associated costs for the Claimant of responding to those deficiencies through a series of applications and hearings. There has been no adequate explanation for this delay.

39. I know that Mr Vinnicombe sought to have his application for security of costs dealt with before the hearing on the application to strike out. But Steyn J by her Order of 17 October 2024 decided that it would not be appropriate to determine the application without a hearing and that both applications should be heard together, noting in her reasons that:

> *"it is apparent that there is a significant issue as to whether it would be fair to make a security for costs order, despite the Claimant's admitted residence abroad and impecuniosity, given the merits of the claim. The latter will in any event fall to be considered at the Hearing of the Claimant's Application. I do not consider that it would be just, proportionate or appropriate for the Security for Costs Application to be determined without a hearing, or at a hearing prior to the determination of the Claimant's Application. The Security for Costs Application will fall to be considered in the context of the Claimant's Application and so I have directed that it should be listed for hearing at the same time."*

40. I have now had the opportunity to consider the submissions of both parties in relation to the security of costs application and in the Claimant's application to strike out at a hearing. The absence of security for costs may undoubtedly have had an impact on the Defendant's ability to defend this claim, however, I have seen no convincing reason why an application was not made at an earlier stage in the proceedings when it might have been just to make such an order. Instead, the proceedings have been protracted and fraught with delays as the Defendant has been given chance after chance to rectify his pleadings. These delays have added to the complexity, costs and no doubt the stress of the proceedings on both parties.

41. Taking account of the procedural history, the likely outcome of the claim in the absence of reasonable grounds for defending the claim and the unexplained delay in making this application for security for costs, I find that it would not be just to order security for costs at this stage of the proceedings taking account all the circumstances of the case. Therefore, the application for security for costs is dismissed.

Conclusions

42. For the reasons given in this judgment, the Defence is struck out under CPR r.3.4(2) and judgment entered for the Claimant. The Counterclaim is struck out and the application for security for costs is dismissed. The matter will now be listed for a remedies hearing to address any outstanding issues and remedies.

43. Costs reserved for the remedies hearing.