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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION



No. ATC18/0046

[2018] EWHC 1811 (QB)

Royal Courts of Justice

Tuesday, 27 March 2018

Before:

MR JUSTICE ANDREW BAKER

BETWEEN:

DOUBLE NEGATIVE LTD

Claimant

- and -

- (1) THOMAS MORTELETTE
- (2) PERSONS UNKNOWN
- (3) JOEL BUTCHER
- (4) MAZLUM ALTUN

Defendants

MR D. TATTON BROWN QC (instructed by Dentons) appeared on behalf of the Claimant.

FOURTH RESPONDENT appeared as a Litigant in Person.

FIRST, SECOND and THIRD RESPONDENTS were not present and were not represented.

JUDGMENT

MR JUSTICE ANDREW BAKER:

- 1 In all the circumstances, and for reasons I shall explain in due course, I intend to pronounce, as I indicated before the short adjournment, the findings in this case as to contempt of court, but I propose to adjourn the question of penalty. That adjournment will be to a date to be fixed with a hearing time of one hour in the week of 30 April with the case reserved to me. That is to say, Mr Altun, I am retaining carriage of the case so it will be me that deals with a penalty and that is because the procedural course I am adopting today, of determining matters but stopping short of determining penalty, is very much a function of my particular handling of this hearing. It is also because that will, I hope, keep costs down as much as possible in circumstances where, as things stand, you are liable to find that the costs of this exercise fall ultimately on you.
- 2 So, Mr Tatton Brown, in relation to the claimant, I emphasise, therefore, that whilst I will say at the end that I do invite written submissions by way of skeleton arguments for that further hearing on the claimant's side, that is without obligation. If you choose to serve anything further, you should take your skeleton argument for today as read and restrict anything more simply to a report on developments between today and the hearing when you are back in front of me.
- 3 This is the final hearing of the claimant's application to commit the fourth defendant, Mazlum Altun, who appeared before me in person, for contempt. The background to the matter is that the claimant, Double Negative Limited, is a high-end, visual effects business. It provides digital visual effects for film and television studio clients and has worked on extremely well-known, big budget projects.
- 4 Proceedings commenced when it was discovered that footage and still images from projects on which the claimant was engaged were appearing on the internet. Their origin, it is clear, was "Monthlies", which are compilations put together monthly, as the name suggests, to showcase internally, within the claimant's employees, some of the projects, and progress on projects, being worked on within the company.
- 5 Suspicion initially fell upon the first defendant, Thomas Mortelette, a former employee of the claimant, as a result of a view formed within the claimant that he had or may have copied and retained data files from distributed Monthlies. It has now become clear - and became clear within a matter of a few days of proceedings originally being commenced, with Mr Mortelette as the only specific named defendant - that Mr Altun, the fourth defendant, was the source of the uploaded material discovered on the internet. Furthermore, it was discovered that his source for that material had not been Mr Mortelette, but his, that is Mr Alun's, friend, the third defendant, Joel Butcher. Mr Butcher also had been, like Mr Mortelette, employed by the claimant.
- 6 As a result of that further information acquired by the claimant, on 7 December 2017 an application was made before Mr Justice Phillips. By his order of that date, Mr Butcher and Mr Altun were joined as defendants to the proceedings and they were each the subject of an injunction. As far as relevant for today's purposes, the injunction granted by Mr Justice Phillips required at para.9 that, within three working days of being served with his order, Mr Altun had to swear and serve an affidavit setting out the information specified in para.8 of the order, to which I shall

return. It provided by para.11 that, except for the purpose of obtaining legal advice, Mr Altun:

“Must not directly or indirectly inform anyone of these proceedings or of the contents of this order or the facts and matters arising from this application, or warn anyone that proceedings have been or may be brought against them by the claimant, until 4.30 pm on the return date, or further order of the court”.

At the time the order was made, the return date was set as 18 December 2017. It may subsequently have been moved back a few days by agreement.

7 The obligation under para.9 of the injunction to set out information by affidavit referred, as I said, to para.8. That paragraph created an obligation within 24 hours of service of the order to inform the claimant’s solicitors so far as Mr Altun could say he was aware of the following:

(i) where all Listed Items were or could be located, other than those in the possession, custody or control of the claimant or its current employees, including all or any relevant email addresses or internet sites. If accessing Listed Items in a specified electronic location required a user name or password, Mr Altun had to inform the claimant’s solicitors of all such information of which he was aware to enable the claimant such access;

(ii) the name and address of everyone to whom he had supplied Listed Items, otherwise in the case of the third defendant than for the legitimate performance of his duties when employed by the claimant, including, where appropriate, any relevant internet user name or identification and/or any relevant email address;

(iii) full details of the dates and quantities of every such supply including, where appropriate the identification of any relevant USB device;

(iv) the name and address including, if relevant, any internet user name or identification and any relevant email address of anyone who had, without the claimant’s authorisation, published or caused to be published any image, information or content contained in or recorded in any Listed Item.

8 The Listed Items for those purposes were defined in the order to mean the Monthlies – with a definition of what that meant – produced for April, May, June, July and August 2017, or any of those Monthlies, together with any media or materials copied or derived from such Monthlies.

9 The allegations of contempt of court against Mr Altun pursued by Application Notice issued under CPR Part 81 on 12 January 2018 arose because, firstly, in relation to para.9 of the order of Mr Justice Phillips, he did not swear and serve any affidavit, and indeed it is said that he has still not done so; and, secondly, in relation to para.11 of the order, because it is said he made contact with Mr Butcher immediately following service of the order in a manner that infringed against the injunction contained in that paragraph.

10 The Application Notice seeking committal for contempt also made allegations of contempt against Mr Butcher. It came on for a hearing for a first time on 25 January 2018. On that occasion, the application was dealt with as against Mr Butcher who had secured emergency legal aid for representation, and in respect of

him findings were made of contempt, but in the face of his substantial apologies, his efforts to remedy the harm he had done and other matters of mitigation, no specific sanction for the contempt was imposed. In the case of Mr Altun, the matter was adjourned in order that he would have a chance to seek legal representation if he wanted to be legally represented.

- 11 After that adjournment, the matter came back to court on 27 February 2018 before Her Honour Judge Taylor. She was persuaded to give Mr Altun a further and, as she intended it to be, final opportunity to obtain legal representation. She therefore adjourned the matter for four weeks. Today has been the hearing of the application as thus further adjourned by her.
- 12 Her order recorded that it was made, amongst other things, upon the application against Mr Altun having previously been adjourned to enable him to seek legal aid or otherwise get legal representation and provided at para.4 as follows:

“If by 27 March 2018 [that is today] the fourth defendant is still not legally represented, the application will proceed against him notwithstanding such lack of legal representation”.
- 13 The claimant’s solicitors following that hearing ensured, and I am satisfied, that Mr Altun was duly served with the sealed final version of Her Honour Judge Taylor’s order and that he was reminded of the hearing today, and on 15, 19 and 21 March, that is to say over the ten days or so prior to today’s hearing, he was reminded those three times that the hearing was coming up. He was asked upon those occasions to confirm whether he would be legally represented as those representing the claimant unsurprisingly were keen, if possible, to liaise with any legal representatives acting for Mr Altun to prepare for today’s hearing. Those most recent communications went unanswered by Mr Altun. That was in contrast to the earlier stages in the matter where he did at least respond to email correspondence, for example in relation to arrangements being made to serve documents on him in the application.
- 14 It came, therefore, as an unexpected development that Mr Altun, when he arrived for the hearing today, albeit arriving late, informed the court, having made no contact whatever with the claimant’s representatives beforehand, that he did now have in mind to instruct a firm of solicitors, Ismail & Co, relatively local to him, whom he believed were willing in principle to represent him, although he had yet to have a face-to-face meeting with them. In those circumstances, his first request was that I adjourn the matter yet a third time, despite the clear language of Her Honour Judge Taylor’s order. I concluded, having heard what Mr Altun had to say and having heard submissions from Mr Tatton Brown QC on behalf of the claimant, that no further adjournment was appropriate.
- 15 This is a matter in which there is no material change in the circumstances as they stood before Her Honour Judge Taylor. On Mr Altun’s information given orally to the court, I am quite satisfied that he failed to make any seriously diligent effort to line up legal representation in time for today’s hearing. Furthermore, it was entirely apparent to me, and as was confirmed in reality by my consideration of the evidence relating to the allegations of contempt against him, that there is no even remote prospect, with respect, that obtaining legal representation would enable Mr Altun to articulate or pursue any argument to resist the claims against him that he has acted in breach of Mr Justice Phillips’ order and in contempt of court.

- 16 In all the circumstances, I concluded that it would be an undue prejudice to the claimant and not in the interests of justice to defer yet again a consideration of and ruling upon the allegations against Mr Altun of contempt. I made it clear, however, that the question whether to proceed today to consider penalty, if I found that the allegations of contempt were proved, may be a different matter.
- 17 In relation, then, to the merits of the allegations of contempt, it is quite plain on the evidence before me that Mr Justice Phillips' order was duly served on Mr Altun in person with prominent penal notice in the normal and proper way. Furthermore, it was served under cover of a letter from the claimant's solicitors headed "Important - please read" in which, in bold underlined text, Mr Altun was directed specifically to pay attention to para.11 of the order and its prohibition on contacting others in relation to the proceedings, emphasising that disobedience to that paragraph was itself a matter that could give rise to a contempt of court proceedings.
- 18 Mr Altun on the day the order was made, 7 December 2017, by email at 8.09 pm responded to service of the order acknowledging receipt of it, indicating he hoped he might speak to the claimant's solicitors about it, but claiming, I am quite satisfied falsely, that he had had nothing to do with what he called the leaks, that is to say the uploading of the claimant's confidential footage onto the internet.
- 19 In apparent compliance with para.8 of the order, Mr Altun sent a further email the following day at 4.52 pm accepting and admitting that he held the Listed Items or copies of them electronically on an HP laptop that he was willing to hand up to the claimant's solicitors to inspect. He also then said this:

"Besides upload the images online to Imgur/Reddit, I have not supplied anyone personally with a copy of the files, nor was I supplied with it directly".

After giving details of his Twitter, Reddit and Imgur account activities, he then also stated as follows:

"Joel Butcher didn't supply me with the monthlies, I copied them from his hard drive without his permission. I had no prior knowledge of him having these files. I saw them and copied them".

- 20 It may be observed, firstly, that by this email Mr Altun corrected the initial false claim that he had nothing to do with the leaks, by acknowledging that he was the source of uploading the footage using the two internet services he referred to. Secondly, however, this further account of his activities, given apparently to seek to comply with para.8 of the order, put into circulation what I am entirely satisfied was a false claim that he had not been provided with the Monthlies originally by Mr Butcher but had copied them from his hard drive without his permission.
- 21 Subsequently, when chased on 18 December 2017 for provision of the affidavit that was required by para.9 of the order, Mr Allton asserted by email that he had not been able to do anything about it – he was not in a financial position to hire anyone either, he said – and then this:

"I am aware this breaches the court order, but it is a matter that I have zero control over".

He said he was left with no options and he said: “Apologies. Feel free to pursue whatever option you feel is necessary”.

- 22 It may be observed that whatever precisely Mr Altun had in mind by saying he was not in a financial position to hire people, presumably lawyers, or that he could not do anything about serving an affidavit, the requirements of the order were and are in this respect really very straightforward. Paragraph 8 of the order set out the information that Mr Altun was required to provide; para.9 required that that information be provided in the sworn form of an affidavit. An affidavit is a form of formal written evidence. Mr Altun will have received, when served with the court proceedings, examples of the type and the fee charged by commissioners for oaths to administer an oath so as to make a signed statement into a formal affidavit are extremely modest.
- 23 I referred to being entirely satisfied that the story about taking the material from Mr Butcher without his knowledge was a false account. That arose, I am quite sure, out of the conversations between Mr Butcher and Mr Altun, which may have had a background of prior conversations resulting in an awareness on both their parts that proceedings were on foot against Mr Mortelette and which continued after Mr Altun and, as it happens, Mr Butcher also had been served with the order made against them by Mr Justice Phillips.
- 24 Mr Butcher, for his part, gave two main accounts of those further conversations, the first of which in his affidavit purporting to comply with para.9 of the order contained serious falsehoods, as he subsequently accepted in admitting contempt of court allegations against him. That said, a part of the substance of the conversations as he reported them, once he had by a second affidavit corrected his falsehoods, remained consistent and was, in effect, confirmed to me today by Mr Altun himself. That is to say that Mr Altun contacted him, initially by WhatsApp (Mr Butcher had originally said SnapChat), confirming that he, Mr Altun, was indeed the source of the file leak.
- 25 I am satisfied so that I am sure, as contended by Mr Tatton Brown QC for the claimant, that it was that contact, Mr Altun’s confession to his friend that he was responsible for the leaking and his, Mr Altun’s, willingness to try to take responsibility for it that led to the concocted story between the two of them that Mr Altun would say he had taken them without Mr Butcher’s consent or knowledge.
- 26 The true position, I am satisfied, is that Mr Butcher had supplied the Monthlies to Mr Altun at his, Mr Altun’s, request. Mr Butcher says that was providing them to Mr Altun, a long-standing and very good friend of his, believing that he would use them only for personal viewing and that Mr Butcher was shocked and horrified to discover that Mr Altun had, in fact, been the source of the leaking by way of uploading the footage to the internet.
- 27 It is in those circumstances entirely apparent that Mr Altun has failed, failed entirely knowingly and in my judgment without any conceivable excuse, to comply with para.9 of Mr Justice Phillips’ order requiring an affidavit to be served. In circumstances where, on the one hand, to be fair to Mr Allton, his email in apparent compliance with para.8 has provided some information about the extent of his activities in relation to the Monthlies, but on the other hand against him it also contained falsehoods, even though those falsehoods have been uncovered, it is all the more important than in some cases it might otherwise be that a full, detailed, honest

and accurate account be provided by Mr Altun on oath, that is to say by providing an affidavit by way of sworn evidence in compliance with para.9.

- 28 It is also entirely apparent from the email correspondence to which I have referred that Mr Altun knows he has not done as required and, subject to any response he may make to the findings I am making against him, it is not apparent whether he has any intention even now to attempt to comply with that paragraph.
- 29 In relation to para.11 of the order, the position is a little more complex. I am not satisfied so that I am sure that Mr Altun appreciated, when contacting Mr Butcher in the way he did as recorded in Mr Butcher's evidence, that he was by doing so breaching the order. I say that in particular because of the background that by the time they spoke it seems they were both already aware of the existence of the proceedings as originally commenced against Mr Mortelette and they had both been served with these proceedings as now constituted against them as well. It is not, therefore, clear to me that what they were saying to each other, and in particular what Mr Altun was choosing to say to Mr Butcher, amounted directly or even indirectly to informing Mr Butcher of the proceedings or the order that Mr Justice Phillips had made, or was in any way a matter of warning that proceedings had been or might be brought.
- 30 I am persuaded by Mr Tatton Brown QC that nonetheless the information provided by Mr Altun to Mr Butcher, which Mr Altun says he was providing belatedly because he thought it was the right thing to do, namely to own up to his friend that he had been the source of the leak, did amount to informing Mr Butcher in breach of para.11 of facts and matters arising from the application, being part of the information required to be provided to the claimant by each of the third and fourth defendants under para.8 of the order. I am persuaded that there is a real sense in which that aspect of para.11 was, for the more sophisticated (it may be) individuals involved in the matter at the claimant and their lawyers and, for that matter, on the part of Mr Justice Phillips, targeted at preventing the kind of co-ordination between, in this case, Mr Butcher and Mr Altun, although it might have been between either of them and any other third parties, over what to say in response to the claim.
- 31 In those circumstances, I am satisfied so as to be sure that Mr Altun's communications with Mr Butcher did breach the order and to that extent did further put him in contempt of court. I am not persuaded, as I have indicated, that he will have appreciated that and he said to the court today he did not.
- 32 In all those circumstances I find and declare that Mr Altun, as claimed by the Application Notice of 12 January 2018 and in contempt of court, failed to comply with para.9 of the order of Mr Justice Phillips in that he failed to swear and serve an affidavit setting out the information specified within the time limit stipulated in para.9 or (to date) at all, and para.11 of the order in that he informed Mr Butcher in the early hours of 8 December 2017 and after the order of Mr Justice Phillips had been served on Mr Altun of facts and matters arising from the application, namely Mr Altun's publication of Listed Items on the internet.
- 33 At my instigation, and although it represents a yet further opportunity beyond what was intended by Her Honour Judge Taylor to have been the further and final opportunity for Mr Altun to obtain legal representation, now that it does appear Ismail & Co are willing to represent him and will firstly liaise with the solicitors who represented Mr Butcher to enable an application for emergency legal aid to be made

and then meet Mr Allton in conference next week, I am persuaded that it would not be just to proceed today to the question of penalty.

34 Not only am I deeply conscious, to an extent that I regret to say I am not convinced Mr Altun has properly taken on board until today, that he stands at risk of losing his liberty in this matter and I do not wish to find myself imposing any such penalty unless, in accordance with the authorities in this area, I can conclude that no other sanction is appropriate or proper, but also it does seem to me that the best chance of Mr Altun finally seeking to comply properly with para.9 of Mr Justice Phillips' order whereby to provide, even at this late stage, reassurance to the claimant, if reassurance can be provided, as to the full extent to which its confidential material has been put into circulation, is to allow him that one yet further opportunity.

35 In those circumstances, I will adjourn consideration of penalty, but both because of the particular way in which I have chosen to deal with the matter rendering it convenient for me to retain carriage of the case and so as thereby to reduce as much as possible the costs of yet a further outing to court, I will reserve the matter to myself. I will arrange for it to be listed on a date to be notified to the parties in the week commencing 30 April for one hour to deal with the question of penalty.

CERTIFICATE

Opus 2 International Ltd. hereby certifies that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge