Neutral Citation Number: [2020] EWHC 1558 (QB)

Case No: QB-2020-001988

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/06/2020

Before :

MR JUSTICE NICOL

- -

Between :

XLD	**Claimant**
- and -	
KZL	**Defendant**

- -
- -

Gervase de Wilde (instructed by **Cohen Davis, solicitors**) for the **Claimant**
The Defendant was not present and was not represented

Hearing dates: 11th June 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

....

MR JUSTICE NICOL

Mr Justice Nicol :

1. On 11th June I granted the Claimant an interim injunction without notice to the Defendant and various other orders. The hearing took place in private but this judgment is public.

2. In brief the facts as presented by the Claimant are, as follows. The Claimant is a US citizen. He works in the financial services industry and the entertainment business. He sometimes makes trips to the UK. He is married and has a child.

3. The Defendant is a woman whom the Claimant believes lives near Manchester, England.

4. In May 2019 the Claimant accessed a dating website called, 'Seeking Arrangement' ('the website'). This proposes to bring together a 'Sugar Daddy' and a 'Sugar Baby'. As the Claimant describes in his witness statement,

   > 'there is an understanding that the wealthier person (the man or woman) is responsible for paying the other person's expenses, or, if the relationship is more serious, for improvement in their lifestyle.'

5. The Defendant had a profile on the website.

6. The Claimant signed up to the website intending to find someone with whom he could socialise on his visits to England. He contacted the Defendant and they exchanged messages initially via the website and then via the WhatsApp messaging service. The messages became sexually explicit.

7. Shortly after the messaging began, the Defendant made her first financial demand. The Claimant paid via PayPal. That was in May 2019.

8. After a while, the parties' means of communicating changed and they used emails.

9. The Defendant's demands for money persisted. They were supported by threats to tell the Claimant's family about his activities. Mr de Wilde, who appeared for the Claimant, told me that between 25th May 2019 and 14th April 2020 the Claimant had paid a total of £125,000 to the Defendant. He submitted that this was a straightforward case of blackmail.

10. The Claimant had deleted his WhatsApp messages and so they are not available, but the emails are and they (together with such evidence of payments as the Claimant has) are exhibited to the Claimant's witness statement.

11. There came a point when the Claimant instructed a private investigator to find out what could be discovered concerning the Defendant. A copy of the investigator's report is included in the exhibit to the Claimant's witness statement. That included what was thought to be the Defendant's true name. The investigator also reported that on 24 occasions IP addresses connected with the Defendant had been blacklisted because it was thought that blackmail demands had been made from them.

12. Mr de Wilde had to deal with a number of procedural matters before addressing the substance of his application.

Anonymisation of the parties

13. In cases of blackmail, it is common in both criminal and civil courts for the victims to be anonymised. Were it otherwise the very process intended to protect the victim becomes the means of giving publicity to that which the blackmailer is threatening to reveal, see for instance *R v Socialist Worker ex parte Attorney-General* [1975] QB 637, 644. That explains why the Claimant is anonymised.

14. Where the application is made *ex parte* the court obviously only hears one side. In those circumstances, it is only fair to the Defendant that she, too, should be anonymised – see for instance *NPV v QEL* [2018] EWHC 703 (QB) at [7].

15. For these reasons I agreed that anonymisation of both parties was necessary to protect their interests and such an order was appropriate pursuant to CPR r.39.2(4)

Hearing in private

16. The ordinary principle of course is that justice is administered in public. Nonetheless, the common law recognised that there were circumstances where adhering to that general principle would itself defeat the administration of justice. By r.39.2(3) certain types of situation are listed where the hearing can be in private. Mr de Wilde argued that the present case came within paragraphs (a) because publicity would defeat the object of the hearing; (c) the hearing involved confidential information and publicity would damage that confidentiality and /or (g) the court considers this [i.e. a private hearing] was necessary in the interests of justice.

17. I agreed that one or more of these situations prevailed in the present circumstances. It would also have been difficult for Mr de Wilde to present his arguments coherently if it was necessary to go into private session whenever he wished to refer to a private part of the evidence.

18. I therefore agreed that the hearing should be in private. However, derogations from open justice should be no greater than necessary and, since I consider that (with the anonymisation of the parties) it is possible to give a public judgment, I should do so.

The absence of notice to the defendant

19. So far as material the Human Rights Act 1998 s.12 says,

> ‘(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the Convention right of freedom of expression.
>
> (2) If the person against whom the application for relief is made (‘the respondent’) is neither present nor represented, no such relief is to be granted unless the court is satisfied –
>
>> (a) that the applicant has taken all reasonable steps to notify the respondent; or
>>
>> (b) that there are compelling reasons why the respondent should not be notified.’

20. In this case the Defendant had not been notified of the hearing and no steps had been taken to give her notice. Mr de Wilde submitted that I could still proceed for two reasons.

21. First, he argued that blackmail did not involve the exercise of the right of freedom of expression. That may be. But I note that s.12(1) says that the section applies if the relief sought '*might* affect the Convention right of freedom of expression'. Mr de Wilde's argument depended on the position being after trial as it appears from the present evidence. However, if the Claimant's evidence is successfully challenged the relief now sought will have impinged on the Defendant's right of freedom of expression.

22. Mr de Wilde's second argument was that, in any event, there were compelling reasons why the Defendant should not be given notice of the application. If she was given notice, there was the risk that she would do exactly what she had threatened to do and disclose to the Claimant's family his use of the website and other private information. I agreed that there was this risk and, moreover, that the risk was enhanced by the evidence that the Defendant had recently been pressing the Claimant for a further payment and shown signs of impatience. There was also the report of the Private Investigator that IP addresses associated with the Defendant had been disabled because of their association with other blackmail attempts. For all of these reasons I agreed that there were compelling reasons not to notify the Defendant and the qualification in Human Rights Act 1998 s.12(2)(b) was satisfied.

The test to be satisfied before this interim injunction could be granted

23. I have already mentioned Human Rights Act 1998 s.12. That section continues as follows,

> '(3) No such relief [i.e. which might affect the Convention right of freedom of expression] 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.
>
> (4) The court must have particular regard to the importance of the Convention right to freedom of expression ...'

24. In *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253 the House of Lords held that generally the subsection requires the Claimant to show that, on the basis of the evidence currently before the court it was more likely than not that the Claimant would succeed in establishing that he was entitled to an injunction.

25. Although Mr de Wilde submitted that this case could come within one of the qualifications to that general rule, as will become apparent, it is not necessary for him to go that far, since I accept that on the present information before me, the Claimant is more likely than not to be granted the injunction that he seeks.

The Substance of the application for an interim injunction

26. On the material before me there is a strong *prima facie* case that the Defendant has been blackmailing the Claimant.

27. He brings his claim on two bases:

i) Misuse of private information.

ii) Harassment.

28. Misuse of private information requires the court to consider two matters. First whether this is information in which the Claimant has a reasonable expectation of privacy. Mr de Wilde submits that there are four categories of information which meet that test,

i) The fact of the Claimant's visit to the website and his attempt to use the services offered by it.

ii) The fact that the Claimant communicated with the Defendant regarding entering into an agreement and the content of their exchanges.

iii) That their communications included sexually explicit WhatsApp messages and their content.

iv) That the Claimant is a victim of blackmail and information regarding that.

29. I agree with Mr de Wilde that the Claimant is likely to succeed at trial in establishing that in each of these categories the Claimant has a reasonable expectation of privacy. Sexual activities are a classic example of information in which there is a reasonable expectation of privacy and which may be protected by Article 8 of the ECHR see e.g. *PJS v News Group Newspapers* [2016] AC 1081.

30. As to the second question, the court must consider what if any rights are to be balanced against the Claimant's right under Article 8 to respect for his private life.

31. I also agree with Mr de Wilde that the Claimant is likely to establish that the balance (if indeed there is any to be struck) comes down firmly in the Claimant's favour.

32. The second way in which the Claimant puts his claim is in reliance on the Protection from Harassment Act 1997. Harassment is an offence, but the Act also allows civil remedies including an injunction. There must be a course of conduct and so an element of persistence, but the evidence of the Claimant shows that the Defendant has persisted here. The ingredients of the tort of harassment were summarised by Simon J. in *Dowson v Chief Constable of Northumbria* [2010] EWHC 2612 (QB). On the present evidence, all are present here.

33. Blackmail is also a criminal offence (see Theft Act 1968 s.21). These are, of course, civil, not criminal, proceedings but the evidence that the crime has been committed is supportive of the Claimant's claim in harassment.

Matters raised by Mr de Wile as part of his duty as counsel on an ex parte application

34. Very properly Mr de Wilde recognised that as counsel on an *ex parte* application he had a duty to put before the Court any matter on which the absent defendant might have wished to rely.

35. Since the Claimant was a US citizen and domiciled there, the defendant might have questioned the Court's jurisdiction. However, by the Recast Brussels Regulation Article

7 the UK court has jurisdiction if the *Defendant* is domiciled in the jurisdiction. On the material before the court, that is the case.

36. The absent defendant might also have questioned whether the law of England and Wales was applicable. But even if that were so (and the matter was not the subject of extensive argument) Mr de Wilde pointed out that there is a presumption that foreign law is the same as English law (or that it yields the same result). As Mr de Wilde submitted, it would, to put it no higher, be surprising if, whatever system of law was applicable, it tolerated blackmail of the kind which is alleged here. I agree.

37. I have already mentioned that the Claimant had deleted his WhatsApp messages and so the early communications between the parties are not available. While that is a gap, it does not undermine the Claimant's case. There is ample evidence in what is available of the Defendant's demands and the Claimant's payments.

38. For all of these reasons I considered on the material before me that the Claimant was likely to succeed at trial and I granted the injunction until a return date when the Defendant would have the opportunity to oppose the continuation of the interim injunction.

39. I also allowed the Claimant to serve the Defendant by alternative means.

40. It is not necessary in this judgment to refer to the details of the order which I made and which was not entirely in line with the draft put forward by Mr de Wilde.