

Neutral Citation Number: [2020] EWHC 2701 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Case No: QB-2018-000581

Courtroom No. 13

The Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 22nd September 2020

Before:

THE HONOURABLE MR JUSTICE LAVENDER

B E T W E E N:

(1) TRIAD GROUP PLC
(2) NICHOLAS EDMUND BURROWS
(3) ALISTAIR MCINTYRE FULTON

and

MIRA MAKAR

MR J DEAN appeared on behalf of the Claimants
NO APPEARANCE by or on behalf of the Defendant

JUDGMENT

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MR JUSTICE LAVENDER:

1. The claimants applied by a notice issued on 15 June 2020 for the committal of the defendant, Mira Makar, for contempt of court. The background to this application is set out fully in the judgment of Julian Knowles J of 27 February 2019 (*Triad Group Plc v Makar* [2019] EWHC 423 QB) and in the judgment of Saini J of 14 February 2020 (*Triad Group Plc v Makar* [2020] EWHC 306 QB). The alleged contempts consist of alleged breaches of paragraphs three to eight of the order of Julian Knowles J, dated 12 February 2019, which I will refer to as “the injunction”, committed in the period from 31 March 2019 to 4 May 2020.
2. The application first came before me on 21 July 2020. The defendant did not appear. I made an order dispensing with personal service of the injunction and of the committal application notice. I adjourned the hearing to today and I ordered that the defendant must attend the adjourned hearing in person, unless by 25 August 2020 she applied for, and was subsequently granted, permission to attend remotely, and that if she failed to do so a warrant might be issued for her arrest or the hearing might proceed in her absence, in which case the court might decide to make an order in her absence for her committal to prison. I also ordered that my order could be served on the defendant by email sent to mira.makar@btinternet.com, by first class post addressed to 218 Ben Jonson House, Barbican, or by inserting it through the letterbox of 218 Ben Jonson House. There is before me an affidavit made by Simon Quincey Hobbs of the claimants’ solicitors in which he states that my order was served by email and post on 10 August 2020. Coincidentally, the defendant was adjudged bankrupt on 11 August 2020.
3. Despite my order, the defendant has not attended this hearing. She has not communicated with the claimants’ solicitors or the court. This is consistent with her approach to this litigation throughout. It is clear that the defendant is aware of this hearing. I need not recite all of the evidence relied on in support of that proposition. The most striking evidence is that she posted a tweet on 16 September 2020 which contained a screenshot of an email from Mr Hobbs headed, “Committal application hearing... 22 September 2020” and she added the following comment:

“Alistair McIntyre Fulton, Nicholas Edmund Burrows allowed to use TRD name to imprison Mira Makar, thereby blocking AGM attendance whilst in prison from 22.9.20.”
4. It is clear from this that the defendant is aware that there is a hearing today which may result in her being sent to prison. When she failed to appear at 10.30 an email was sent to her inviting a response by 11am. No response was received.
5. The first question to arise today was whether I should proceed to determine the issue of whether the defendant was in contempt of court in her absence. I decided that I should. The second question was whether she was in contempt of court. I am sure that she was, in the respects which I will set out in due course. The third question is whether I should proceed to impose a sanction today in the defendant’s absence. I do not consider that it would be appropriate to do that. I will instead adjourn this hearing and issue a warrant for the defendant’s arrest.
6. As to the first question, I am satisfied, for the reasons given by Mr Dean in his skeleton

argument, that the procedural requirements of CPR 81 have been met. As to the exercise of my discretion to proceed in the defendant's absence, I was helpfully referred to *R v Jones* [2001] QB 862 at paragraph 22, *Sanchez v Oboz* [2015] EWHC 235 at paragraph 5 and *Oliver v Shaikh* [2020] EWHC 2253 QB at paragraphs 25 to 30. Mr Dean's submissions on the nine factors identified by Cobb J in *Sanchez v Oboz* are set out in detail in his skeleton argument and I need not repeat them. I accept that a consideration of those factors on the facts of this case indicates that the appropriate course is to proceed in the defendant's absence to determine whether or not she was in contempt of court.

7. The striking features of this case are that the defendant has disobeyed a direct order to attend this hearing, after I adjourned the application for two months to give her a chance to participate and warned her in my order that this hearing might proceed in her absence. It is clear that her non-attendance is deliberate. She has chosen to waive her right to attend. She has not asked for the hearing to be adjourned and, indeed, she appears to expect that the hearing will proceed in her absence. There does not appear to be any good reason why the defendant's conduct should cause any further delay so far as the determination of whether she is in contempt is concerned.
8. I turn now to the question of whether the defendant is in contempt of court. She was until 2005 a director and the chief executive officer of the first claimant company, in which she retained a shareholding. There was a dispute between her and the first claimant, which was settled by an agreement dated 4 November 2006. Paragraph 5.1 of that settlement agreement provided as follows:

“The respondent [*i.e. the first claimant*] and the claimant [*i.e. the defendant*] agree that they will not, whether directly or indirectly, make publish or otherwise communicate any disparaging or derogatory statement(s) whether in writing or otherwise concerning the other including, in the case of the [Defendant], any disparaging or derogatory statements concerning the [First Claimant] or any of its Group Companies or any of its or their officers or employees.”
9. The claimants issued the claim form on 18 December 2018 alleging breach of contract, defamation, and harassment arising *inter alia* out of numerous statements made by the defendant in emails, tweets or otherwise. Julian Knowles J gave judgment in default of defence and issued his injunction.
10. I turn now to paragraphs three to eight of the injunction. In summary:
 - (1) Paragraph three requires compliance with paragraph 5.1 of the settlement agreement.
 - (2) Paragraphs five and seven prohibit any repetition of the defendant's defamation of the second and third claimants.
 - (3) Paragraphs four, six, and eight prohibit further harassment of the claimants.
11. Paragraph three is in the following terms:

“The defendant must not whether by herself, her servants or agents or otherwise howsoever make, publish or otherwise communicate any disparaging or derogatory statements concerning the First Claimant or any of its officers or employees.”

12. In relation to paragraph three, it is to be noted that the second claimant was the finance director of the first claimant company until 19 March 2020 and the third claimant is and has at all material times been a non-executive director of the first claimant.
13. Paragraph five is in the following terms:

“The Defendant must not, whether by herself, her servants or agents or otherwise howsoever publish, or cause, authorise or procure the publication of allegations consisting of or containing the meanings specified in paragraph 98 of the Particulars of Claim or any similar allegations defamatory of the Second Claimant.”
14. Paragraph seven is in the same terms, save that it refers to the third claimant rather than the second claimant and to paragraph 101 rather than paragraph 98 of the particulars of claim. It is to be noted in relation to these two paragraphs that paragraph 98 of the particulars of claim sets out the meaning of 20 separate tweets posted by the defendant which were defamatory of the second claimant and paragraph 101 of the particulars of claim sets out the meaning of three separate tweets posted by the defendant which were defamatory of the third claimant.
15. Paragraph four is in the following terms:

“The Defendant must not, pursuant to section 3A(2) of the Protection from Harassment Act 1997, whether by herself, her servants or agents or otherwise howsoever, pursue any conduct which amounts to harassment of the Second or Third Claimant or any other of the First Claimant’s officers or employees, specifically by either (a) contacting any such person whether in person, by telephone, by text message, by email or otherwise (b) naming any such person, or referring to him or her whether by way of role or position or otherwise in such a way that he or she is likely to be identifiable, in any statement published on a forum accessible to the public or a section of the public whether by subscription or otherwise (including but not limited to Twitter and the ADVFN website) whether in connection with the Defendant’s dispute with the First Claimant in relation to her shareholding in the First Claimant or otherwise.”
16. Paragraphs six and eight were in substantially the same terms, but were limited to the second and third claimant respectively.
17. The schedule attached to the application notice lists 28 alleged contempts of court in the period from 31 March 2019 to 4 May 2020. During the course of this hearing Mr Dean sensibly abandoned some of the allegations, i.e. numbers 1, 11 and 22, and reduced the scope of certain others.
18. Allegation 2 concerns an email from the defendant dated 9 April 2019 in which she accused the second claimant of insider dealing and of uploading a false “RNS”. That refers to the Regulatory News Service, which is a means of announcing potentially market-sensitive news. The allegations against the second claimant repeat or are substantially the same as the defamatory statements referred to in paragraphs 98.2, 98.3 and 98.16 of the particulars of claim. Those paragraphs are in the following terms:

“98.2. The tweet referred to at paragraph 56 above meant and was understood to

mean that the Second Claimant had improperly intercepted post concerning the Defendant and was responsible for false entries on public registers concerning the Defendant.

98.3. The tweet referred to at paragraph 57 above meant and was understood to mean that the Second Claimant had improperly provided insider information to Paul Newman and had placed forged entries relating to the Defendant on the share register maintained by Equiniti.

98.16. The tweet referred to at paragraph 71 above meant and was understood to mean that the Second Claimant was knowingly responsible for the making of fictitious public announcements by the First Claimant.”

19. I am sure that this email was a breach of paragraphs three and five of the injunction. What it said about the second claimant was clearly both disparaging and derogatory and by naming him it continued the established course of harassment.
20. Allegation 3 concerns a posting on the ADVFN website referred to in paragraphs four, six and eight of the injunction under the username 2012Folio336 on 13 June 2019. I am sure that the defendant made this and the other postings under that username on that website which are relied on in this case. I reach that conclusion for a number of reasons:
 - (1) First, she signed this and other postings “Mira” and gave her email address and telephone number.
 - (2) Secondly, the person referred to as ‘me’ in this and other postings is the defendant and the content of the postings reflects what appear to have been the defendant’s concerns and allegations about the claimants.
 - (3) Thirdly, in a subsequent posting she joked that her correspondent, who addressed her as Mira, might get a penal notice, something which the injunction contained and which had been referred to in correspondence by Freeths.
 - (4) Fourthly, she subsequently amended the posting to include both a quotation from the transcript of the hearing before Julian Knowles J, which had been sent to her by Freeths, and a copy of an email sent to her by Allen & Overy in 2017.
 - (5) Fifthly, 2012Folio336 was the case number for an action which the defendant had brought in the commercial court.
 - (6) Moreover, it appears in tweets posted by the defendant on 6 June, 12 July and 8 September 2017 and 31 May 2018.
 - (7) Finally, there was also a Twitter account with the username 2012Folio336. The profile page on the Twitter website for that username was headed by a copy of the certificate issued by the Institute of Chartered Accountants that the defendant was a member of that institute.
21. The posting on 13 June 2019 accused the second and third claimants of maliciously libelling the defendant and repeating that falsehood in an RNS knowing that it was untrue. This repeated or was substantially the same as the defamation pleaded in paragraph 98.16 of the

particulars of claim as against the second claimant and in paragraph 101.2 of the particulars of claim as against the third claimant. Paragraph 101.2 of the particulars of claim is in the following terms:

“The tweets referred to at paragraphs 59 and 73 above meant and were understood to mean that the Third Claimant was responsible for fabrication and malicious gossip and was criminally liable for his failure properly to maintain the First Claimant’s share register.”

22. I am sure that by making this posting the defendant was in breach of each of paragraphs three, four, five, six, seven and eight of the injunction.

23. Allegation 4 concerns the amended version of the posting which is the subject of allegation 3. It added to the allegation of malicious falsehood an allegation that the second and third claimants had committed a criminal offence by publishing an account which they knew was false. Consequently, I am sure that this was a further breach of each of paragraphs three to eight of the injunction.

24. Allegation 5 concerns another posting on the ADVFN website using the 2012Folio336 username on 21 June 2019. It accused the second claimant of making up an Excel spreadsheet relating to the first claimant’s shareholder’s voting records. This repeated or was substantially the same as the defamation pleaded in paragraphs 98.19 and 98.20 of the particulars of claim. Those paragraphs state as follows:

“98.19. The tweet referred to at paragraph 75 above meant and was understood to mean that the Second Claimant had improperly deleted records of shareholders’ voting cards.

98.20. The tweet referred to at paragraph 76 above meant and was understood to mean that the Second Claimant had improperly ordered another to manufacture false Excel spreadsheets which excluded the Defendant’s votes.”

25. I am sure that by making this posting the defendant was in breach of paragraphs three, four, five and six of the injunction.

26. Allegation 6 concerns a posting on the ADVFN website by the username 2012Folio336 on 23 June 2019 which alleged that the second claimant had hidden documents which the defendant needed for insurance purposes. This was substantially similar to the defamation pleaded in paragraph 98.11 of the particulars of claim, which provided as follows:

“The tweet referred to at paragraph 66 above meant and was understood to mean that the Second Claimant had improperly removed the Defendant from the published accounts of the First Claimant and improperly had not sent her a company report, accounts or shareholder’s voting card and improperly withheld from her a dividend to which she was rightfully entitled.”

27. I am sure that by making this posting the defendant was in breach of paragraphs three, four and five of the injunction.

28. Allegation 7 concerns a posting on the ADVFN website under the username 2012Folio336

on 26 June 2019. This posting alleged that officers of the first claimant interfered in some way with the work of Equiniti, the company who maintained the first claimant's share register, to correct an entry concerning the defendant's shareholding. I am sure that this was a breach of paragraph three of the injunction.

29. Allegation 8 concerns a second posting on the ADVFN website under the username 2012Folio336 on 26 June 2019. It alleged the commission of an offence in connection with an RNS which displayed the defendant's name. I am sure that making this posting was a breach of paragraph three of the injunction.
30. Allegation 9 concerns a third posting on the ADVFN website under the username 2012Folio336 on 26 June 2019. It also alleged that the first claimant had acted wrongly in issuing RNSs which named the defendant. Again, I am sure that by making this posting the defendant was in breach of paragraph three of the injunction.
31. Allegation 10 concerns an email sent by the defendant on 28 June 2019 which included an allegation that the second claimant had helped himself to the company's money, "draining millions". It also set out the text of an email sent by the defendant on 11 August 2015 which accused the second claimant of dishonesty, complicity and ineptitude and of being unfit to be an employee. This repeated or was substantially the same as the defamation pleaded in paragraph 98.8 of the particulars of claim, which is in the following terms:

"The tweet referred to at paragraph 63 above meant and was understood to mean that the Second Claimant is so dishonest and inept that he is unfit to be an employee of the First Claimant."
32. I am sure that by sending this email the defendant was in breach of paragraphs three and five of the injunction.
33. Allegations 12 to 16, 21 and 22 concern postings on the website inthepublicdomain.net. I am sure that the defendant is the author of the postings on that website for the reasons given by the third claimant in paragraph 19.9 of his first affidavit.
34. Allegation 12 concerns a posting on the website on 4 February 2020 which *inter alia* accused the third claimant of withholding something unspecified from the defendant, alleged that defamatory RNSs had been issued and referred to, 'terror, harassment, and campaign of systematic denigration'. I am sure that by making this posting the defendant was in breach of paragraphs three, four and eight of the injunction.
35. Allegation 13 concerns a posting on the website on 5 February 2020 which accused the third claimant of raiding the defendant's office, in company with the chairman of the first claimant, and accused the third claimant of stealing her briefcase and papers. It also referred to the second claimant and described him as having been driven out, "seemingly destroyed and demoralised". I am sure that this was a breach of paragraphs three, four and eight of the injunction.
36. Allegation 14 concerns another posting on the website on 5 February 2020. It accused the third claimant, referred to as AMF, of apathy, refusing to meet PWC or read board minutes, hiding notes of a meeting, hacking the defendant's records and making personal exchanges public in court. I am sure that by making this posting the defendant was in breach of

paragraphs three, four and eight of the injunction.

37. Allegation 15 concerns a posting on the website on 7 February 2020. This accused the third claimant, again referred to as AMF, of leading the obstruction from 3 February 2005 and of misleading shareholders and creditors. I am sure that this too was a breach by the defendant of paragraphs three, four and eight of the injunction.
38. Allegation 16 concerns a posting on the website on 13 February 2020. This accused the third claimant of withholding evidence, contempt of court, leading bullying, intimidation, and terrorising without authority, giving one Alison Lander access to the defendant's private computerised records and breaking into the defendant's office. It also accused the second claimant of cooking up evidence with Alison Lander. I am sure that by making this posting the defendant was in breach of paragraphs three, four, six and eight of the injunction. I am not sure that there was a breach of paragraph five by reference to paragraph 98.6 of the particulars of claim, which provides as follows:

“The tweet referred to at paragraph 61 above meant and was understood to mean that the Second Claimant had planted a forged document.”
39. Allegation 17 concerns an incident at Côte Brasserie in Whitecross Street on 27 February 2020. This is the only allegation involving personal contact. The evidence comes from the affidavits of Charlotte Mary Rigg and Christopher John Duckworth, both of whom are non-executive directors of the first claimant. Ms Rigg says that the defendant entered or tried to enter a private room in the restaurant before lunch, shouting loudly and aggressively, refusing to leave for 10 minutes, making allegations in a raised and angry voice and twice, once before and once after lunch, putting her arms around Dr John Rigg, the chairman of the first claimant. Mr Duckworth adds that the defendant addressed him in the street before lunch and then pursued him to the restaurant, grabbing his coat sleeve and yanking it and making accusations against him. I accept this unchallenged evidence and I am sure that the defendant was in breach of paragraph four of the injunction.
40. Allegations 18, 19, and 23 to 28 each concern tweets posted using the 2012Folio336 username. I am sure that these tweets were posted by the defendant. I have already referred to the profile page for this account and the evidence of her using the expression 2012Folio336. The content of the postings is consistent with what the defendant posted on the ADVFN and inthepublicdomain.net websites.
41. Allegation 18 concerns a tweet dated 6 March 2020 in which the defendant accused Mr Duckworth of embezzling company money and of bribery. I am sure that this was a breach by the defendant of paragraphs three and four of the injunction.
42. Allegation 19 concerns a second tweet dated 6 March 2020, which accused Mr Duckworth of posing as a non-executive director of the first claimant and described him in effect as a fraudster and a conman. I am sure that this was a breach by the defendant of paragraphs three and four of the injunction.
43. Allegation 20 concerns a posting on the inthepublicdomain.net website on 10 February 2019, which was updated on 12 March 2020. This alleged *inter alia* that the third claimant had admitted to instructing Equiniti to override their fraud prevention machinery. I am sure that this was a breach by the defendant of paragraphs three, four and eight of the injunction.

44. Allegation 21 concerns a posting on that website on 18 March 2020. It made many references to the second claimant, including asserting that he needed to purge his contempt. I am sure that this was a breach by the defendant of paragraphs three, four and six of the injunction.
45. Allegation 23 concerns a tweet posted on 20 April 2020. It accused the third claimant of taking £1.5 million from Triad Group Plc to bribe Allen & Overy to file a false form ET3 (apparently that filed in defence to the defendant's Employment Tribunal claim) knowing it to be false.
46. Allegation 25 concerns a tweet dated 23 April 2020 which accused the third claimant of plotting to use the Companies and Bankruptcy Court perversely.
47. Allegation 26 concerns a second tweet dated 23 April 2020 which made the same accusation.
48. Allegation 27 concerns a third tweet dated 23 April 2020 which made the same accusation.
49. Finally, allegation 28 concerns a tweet dated 4 May 2020 which accused the third claimant of undermining and grilling either the defendant or an alleged whistle-blower, Mr Harris, the chief accountant of Triad Group Plc.
50. I am sure that each of the tweets to which allegations 23 to 28 relate constituted a breach by the defendant of paragraphs three, four and eight of the injunction.
51. The defendant is thus in contempt of court in that she has committed the breaches of the injunction which I have identified. The claimants' position is that the defendant's conduct continues unabated down to this day. I make no finding on that, but I note that the claimants' main objective is to get the defendant to comply with the injunction.
52. That leads me to the third question which arises today. Mr Dean has quite properly referred me to two cases, *JSC BTA Bank v Solodchenko* [2011] EWHC 1613 at paragraph 16 and *Oliver v Shaikh*, which explained why it may not be appropriate for a judge who has decided the issue of contempt in the absence of a defendant to go on to impose a sanction in the defendant's absence.
53. There are undoubtedly factors which argue in favour of proceeding to deal with sanction today. Those are the factors which led me to deal with the issue of contempt today. However, there are factors pointing the other way, the principal amongst which, in my judgment, are:
 - (1) First, the desirability of hearing from the defendant before sanction is imposed.
 - (2) Secondly, the desirability in particular of giving the defendant the opportunity, once she has been arrested, and therefore has concrete reasons to appreciate where her conduct may be leading her, to reflect, before sanction is imposed, on her conduct and on the potential consequences and to indicate to the court any change in her thinking on the subject of compliance with the injunction.
 - (3) Thirdly, there is the fact that, without deciding sanction today, merely arresting the defendant will achieve what the claimants seek, in that it will stop her from posting

any more tweets or making any more postings on websites which the claimants contend are in breach of the injunction.

54. Those are the reasons why I have decided not to proceed to deal with sanction today, but instead to adjourn this hearing and to issue a warrant for the defendant's arrest.
55. In conclusion, I wish to add certain remarks for the benefit of the defendant. It seems, as I have said, that she is aware that she can be sent to prison. She can be committed for up to two years. She should also be aware that whether she is committed to prison, and if so for how long, may (and I stress the word, "may") be influenced by any steps she takes to ameliorate the effect of her conduct, in particular, by removing any postings from any public forum which are in breach of the injunction.

End of Judgment

Transcript from a recording by Ubiquis
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