Neutral Citation Number: [2020] EWHC 306 (QB)

Case No: QB-2018-000581

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/02/2020

Before :

MR JUSTICE SAINI

- -

Between :

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

- and –

MIRA MAKAR **Defendant**

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- -

Jacob Dean (instructed by **Freeths LLP**) for the **Claimants**
The **Defendant** did not appear and was not represented

Hearing dates: 13 February 2020

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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.

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MR JUSTICE SAINI

MR JUSTICE SAINI :

This judgment is in 5 parts as follows:

I. Overview - paras [1-13]
II. Procedural developments, service issues and sums in court - paras [14-22]
III. The Damages Application: legal principles and evidence - paras [23-45]
IV. Conclusion on the Damages Application - paras [46-53]
V. The CPR 72.10 Application - paras [54-60].

I. Overview

1. This is the court's judgment in relation to two applications made by the Claimants.

2. The first application, made by Application Notice dated 5 April 2019, is for an Order pursuant to CPR 72.10(b) that monies in the Court Funds Office held to the credit of the Defendant be paid out to them ("the CPR 72.10 Application"). The second application, by Application Notice dated 25 June 2019, is for an assessment of damages said to be due to the Second and Third Claimants in respect of their claims in libel and for harassment, following judgment in default of Defence granted by Julian Knowles J on 12 February 2019 ("the Damages Application"). That judgment was necessary because, in addition to financial relief, the Claimants sought final injunctions (see CPR 12.4(2)(a)).

3. The full facts are set out in Julian Knowles J's judgment [2019] EWHC 423 (QB), and the following is a broad summary which seeks to provide the context in which the two applications fall to be considered.

4. Until 2005 the Defendant was a director and the CEO of the First Claimant company, of which the Second and Third Claimants are directors. The Second Claimant is also the Finance Director and Company Secretary of the First Claimant but is due to leave the company next month.

5. The First Claimant is an IT company offering services to a variety of clients across the private and public sectors. Following her departure as CEO, the Defendant retained a large and valuable shareholding in the First Claimant.

6. The Defendant's departure from the Company was not harmonious, and legal proceedings in the Employment Tribunal were issued. Those proceedings between the First Claimant company and the Defendant were compromised in November 2006. As part of the settlement agreement the Defendant agreed not to publish disparaging or derogatory statements concerning the company or any of its officers or employees. Since around 2009, and as found by Julian Knowles J, the Defendant has been engaged in a campaign against the Claimants relating to a number of perceived grievances about their conduct.

7. Regrettably, that campaign has continued (at least until August 2019) on the evidence before me, and despite the injunctive relief granted by Julian Knowles J.

8. In this claim, for reasons of proportionality, the Claimants sensibly confined their specific complaints to the Defendant's conduct since the beginning of 2017. The conduct relied on by the Claimants has four main components:

   (a) communications made directly to the Claimants in early 2017;

   (b) allegations concerning the Claimants made to third parties beginning in second half of 2017;

   (c) allegations made by the Defendant on numerous postings on Twitter in the latter half of 2018; and

   (d) allegations made by the Defendant on the investment information website 'ADFVN' in late 2018 and early 2019 (including since the issue and service of the proceedings).

9. The Defendant's conduct and her statements and publications are described in some detail in the evidence before me. Insofar as one can follow what she says, the substance of her communications seem to me to centre on her belief that the Claimants have interfered in her affairs and her shareholding to her financial disadvantage. She has also complained about her bankruptcy.

10. The Defendant has made many accusations including that the Second and Third Claimants and others have been guilty of dishonesty and criminal offences in respect of her, for example, by dishonestly altering records in relation to her shares. She has accused the Claimants of behaving in a way which caused physical injury and harm to her mother. Unsurprisingly, the Second and Third Claimants found these accusations especially offensive and upsetting, and Julian Knowles J so found.

11. As also identified by Julian Knowles J, the Defendant's conduct throughout this period amounted to a breach of the term of the 2006 settlement agreement and also that it amounted to a course of conduct constituting harassment of Second Claimant and Third Claimant, with the harassment being carried out with the intention to persuade the First Claimant to do something that it is not obliged to do, and has included the publication of a series of defamatory allegations of Second Claimant and Third Claimant.

12. Julian Knowles J granted an injunction requiring the Defendant to comply with her obligations under the 2006 agreement and restraining her from pursuing any course of conduct which amounted to harassment of Second Claimant or Third Claimant. He also granted to the Second Claimant and Third Claimant injunctions restraining the Defendant from publishing a series of specified defamatory allegations and restraining her from harassing them. As indicated above, by way of the Damages Application, I now have before me the assessment of Damages Application which was provided for in Julian Knowles J's order.

13. As with the proceedings before Julian Knowles J, the Defendant has refused to engage with the two applications. I am satisfied that the Claimants' solicitors have correctly served the Defendant with these applications. I will address that matter in more detail in the next section of this judgment.

II. Procedural developments, service and sums in court

14. Following his judgment, Julian Knowles J directed (by paragraph 2 of his Order dated 14 February 2019) that the claims for damages of the Second and Third Claimants be assessed (the First Claimant made no claim for damages); and (by paragraph 9) that the Defendant pay the Claimants' costs of the claim and of the default judgment application. He summarily assessed those costs in the sum of £95,744.86.

15. Julian Knowles J's Order was served on the Defendant by email, first class post and by a process server. The Defendant has not paid those costs.

16. The Defendant was made bankrupt on 6 December 2013 (by reason, I understand, of unrelated debts) but on the evidence before me she appears to refuse to acknowledge the fact of her bankruptcy and has refused to cooperate with her Trustee in Bankruptcy ("the Trustee").

17. The Trustee has sold such of the Defendant's assets as were needed to satisfy the bankruptcy debts. However, for reasons which are unclear, the Defendant refused to receive the surplus funds held by the Trustee resulting from such sale.

18. In these circumstances, and by Order of the Insolvency and Companies Court dated 11 September 2018, the Trustee was ordered to pay into Court any surplus funds forming part of the bankruptcy estate and held by the Trustee after the discharge in full of the costs and expenses of the bankruptcy.

19. I understand that pursuant to that Order the sum of £123,047.03 was paid into the Court Funds Office by the Trustee on 4 April 2019.

20. The CPR 72.10 Application was served on the Defendant by first class post at her usual residential address and by email on 31 May 2019 and then, again by post and email, along with the notice of the original 27 January 2020 hearing date and the new hearing date (13 February 2020)**.** I am satisfied that the Defendant is resident at the address where these documents were served (based on Land Registry entries in the materials before me); and that she uses the email address to which the documents were sent.

21. The application was also served on the Accountant General at the Court Funds Office ("CFO") by letter dated 17 May 2019. The CFO confirmed to the Claimants' solicitors that the application had been received, that the total monies in Court stood in the region of £123,000, and would not be paid out pending the determination of that Application. The CFO also has notice of this hearing.

22. The Damages Application, and evidence (including the additional witness evidence relied on for the hearing before me) and notice of the present hearing have also all been properly served on the Defendant. I was also informed that the Claimants' solicitor spoke with the Defendant this week on 11 February 2020 and informed her of the hearing fixed for 13 February 2020.

III. The Damages Application: legal principles and evidence

23. It is established that libel damages have a threefold purpose namely: (1) to compensate for distress and hurt feelings; (2) to compensate for actual injury to reputation which has been proved or might reasonably be inferred; and (3) to serve as an outward and visible sign of vindication. The principles were summarised by Warby J in Barron v Vines [2016] EWHC 1226 (QB) at [20] – [21] and [79] – [82].

24. The principles applicable when assessing damages for harassment were set out by Nicklin J in Suttle v Walker [2019] EWHC 396 (QB) at [54] – [56].

25. Damages for harassment under the Protection from Harassment Act 1997 are to compensate a claimant for distress and injury to feelings: ZAM v CFW & Anor [2013] EMLR 27 [59]. As far as assessment of harassment damages is concerned there are established guidelines taken from employment discrimination cases, see Barkhuysen v Hamilton [2018] QB 1015 [160]:

> "Guidelines for damages in harassment were given by the Court of Appeal in *Chief Constable of West Yorkshire Police v Vento (No2)* [2003] ICR 318. The court identified three broad bands for compensation for injured feelings: a top band for very serious cases, a middle band for moderately serious cases and a third band for less serious cases, such as isolated or one- off occurrences. Only in the most exceptional cases, it was said, would it be appropriate to award more than the top band and awards of less than £500 were to be avoided as they risked appearing derisory. Again, adjustment for inflation is required. The former adjustment was made by the Employment Appeal tribunal in 2009 in *Da'Bell v National Society for the Prevention of Cruelty to Children* [2010] IRLR 19. Inflation since then has been some 20%, leading to a range in band 3 of up to £7,200, a middle band from £7,200 to £21,600 and a top band from £21,600 to £36,000. A *Simmons v Castle* adjustment is also required."

26. As explained by Nicklin J, the sums in the so-called *Vento* bands have more recently been increased. I refer here to paragraph 10 of The Employment Tribunal's Presidential Guidance of 5 September 2017:

> "A lower band of £800 to £8,400 (the less serious cases), a middle band of £8,400 to £25,200 (cases that do not merit an award in the upper band) and an upper band of £25,200 to £42,000 (the most serious cases), with the most exceptional cases capable of exceeding £42,000."

27. On the facts before me there is a significant, although by no means complete, overlap between the conduct complained of in the libel claim and the conduct complained of in the harassment claim. I, accordingly, consider it appropriate to adopt the same approach as in Suttle and make a single award of damages for each of the Second and Third Claimants in relation to both causes of action.

28. As to how one should approach the factual basis for assessment of damages, this matter was addressed by Nicklin J in Suttle:

> "35. CPR 12.11(1) provides that: 'Where a claimant makes an application for a default judgment, judgment shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case.'
>
> 36. Accordingly, the general rule is that where judgment has been entered in default the court will proceed to determine the remedies that the claimant should be granted on the basis of the claimant's unchallenged pleaded case. Where the defendant has not disputed the claimant's case there is no need to adduce evidence, or for the court to make express findings of fact. Indeed, it would usually be disproportionate and contrary to the overriding objective to use court resources to do so. The claimant can legitimately be granted remedies, therefore, on the assumption that his or her case is correct. The court may depart from this general rule but only if it is clear that the claim is for some reason impossible or that any required legal threshold has not been met: *Sloutsker* [84]-[86]."

29. On the pleadings before me the campaign of the Defendant against the Claimants has lasted a number of years (and continued until August 2019). It has been prolific, generating a vast quantity of material, much of which pleaded in some detail on the Particulars of Claim (by reference to the 3 periods to which I make reference below).

30. In each case the acts relied on for the libel claim are a sub-set of the acts relied on for the harassment claim. This is because the harassment claim encompasses communications made by the Defendant to the Claimants themselves, or communications by the Defendant to third parties which were distressing or alarming, but not defamatory of the Claimants, or which were out of time for a claim in libel at the date the Claim Form was issued in December 2018.

31. Three distinct periods of time are relied on, as I summarise below.

January to August 2017

32. This period is relied on for the harassment claim only. During this period the Defendant's conduct consisted of persistent and aggressive direct contact with the Third Claimant which included the making of allegations against the Second Claimant. I note in particular the frequency of the contact, as well as the distressing nature of the allegations which the Defendant was making to the Claimants. She accused the Third Claimant of "fabrication and malicious gossip", assisting to "help steal [the Defendant's] shares", acting in a way which was "utterly and totally barbaric" and which had caused "horrified shock" and "hurt and upset" to the Defendant's mother, as well as other serious medical effects. She accused the Second Claimant of "collusion" in criminal activity for which he was "culpable" and which had caused "devastating consequences".

August to November 2017

33. This period is also relied on for the harassment claim only. During this period the Defendant continued direct contact with the Claimants but also began to make

derogatory allegations about them to third parties. Of particular note, allegations were made in emails copied to the company's auditors and brokers that the Second Claimant had acted "fraudulently and dishonestly" and "spread malicious falsehoods" and that the Third Claimant had "caused the traumas and stroke symptoms" suffered by the Defendant's mother, acted in a way that was "quite barbaric" and was guilty of "bullying and intimidation".

September to December 2018

34. During this period the Defendant's conduct consisted of frequent tweeting about the Claimants, often in a way which made serious defamatory allegations of the Second and Third Claimants. This period therefore includes conduct complained of in both the harassment and the libel claims. There were many dozens of Tweets. There was retweeting. The Tweets were accessible on the Defendant's public Twitter profile. She enjoyed 222 Twitter followers. In addition to her followers, her Tweets were directed to the specific attention of a group of around 47 individuals and organisations, by inclusion of their Twitter username in the Tweet in question. Those targeted included accountancy and business advisory organisations, MPs and journalists.

35. The defamatory meanings of the various Tweets was that criminal offences of fraud and dishonesty had been committed.

36. I also consider it material to the distress caused to the Claimants that during the time period referred to above the Claimants repeatedly complained to the Defendant about her conduct and requested her, in measured terms, to desist. They issued proceedings only when it became apparent that was only way to protect their rights. I refer here to the Claimants' solicitor's letters to the Defendant of 25 September 2017, 14 December 2017 and 19 October 2018. I return to this issue at the end of this judgment.

37. Even after the service of the Claim Form and pleadings (and prior to judgment in default being granted) the Defendant continued her campaign, shifting her focus to postings on the investment news website ADVFN. She continued to make very similar allegations against the Claimants. I have noted that some of her postings during this period demonstrated that she was fully aware of the proceedings against her.

38. As identified in the further evidence before me (the second witness statements of the Second and Third Claimants) it is highly unfortunate that the Defendant continued her offensive activities against them in the weeks and months after the Court granted judgment against her. In my judgment, these acts were in defiance of the injunction imposed by Julian Knowles J.

39. I consider this last matter to be material to the assessment process in two ways. First, in my judgment, the continuing conduct demonstrates the need for a substantial award to provide outward and visible sign of vindication of the falsity of the serious allegations made. The fact that the Claimants have encountered some difficulty in removing the allegations originally complained of from Twitter and have faced similar further allegations from the Defendant on Twitter and the ADVFN website show the continuing need the Claimants have to be able to point to an award from the Court to demonstrate the untruth of the allegations.

40. Second, I consider that the conduct of the Defendant between the date of judgment and the date of the assessment, in repeating the libels, and continuing the harassing conduct, in defiance of the Order of the Court, can properly be taken into account as aggravation of the distress caused by the conduct which forms the subject matter of the action.

41. I turn now to consider the evidence before me of the effect of the conduct on the Claimants.

42. The Second Claimant's statements identify the serious personal effects on him of the Defendant's conduct. With substantial justification he rightly describes the conduct as "deeply distressing", as having had a "deeply unpleasant and unwelcome effect on me", and as a "source of distress and anxiety to me for many years". He refers to the serious effects which the Defendant's conduct has had on his mental and physical health, his home life and his working life. In his more recent evidence, he explains that he still experiences "a great deal of stress and anxiety at work as a result of the Defendant's behaviour" and that he has taken the decision to resign from the company, the Defendant's conduct being a "major factor" in that decision.

43. Turning to the Third Claimant, his evidence is that he has found the Defendant's "truly unpleasant" conduct "very upsetting" and as having had "an adverse effect on my mental wellbeing". He notes at that he has found the Defendant's repeated claim that he has been "somehow responsible for the failing health and eventual death of [her] mother particularly upsetting". He notes how, despite him having "never met, seen, spoken to or otherwise communicated" with the Defendant's mother "it is still remarkably upsetting to be accused repeatedly of such an awful thing and for those accusations to be made in a very public way". He states that the "ferocity of the language used is devastating" and "has caused me sleepless nights and anxiety". He also identifies that the distress has been increased by the timing and frequency of the Defendant's activity. With justification, the Third Claimant also speaks of his concern about the conduct causing "damage to my reputation and credibility in the IT industry and more widely, which I have worked so hard for many years to establish and cultivate".

44. Although I was referred to a number of comparables, it was rightly submitted by Counsel that they only provide indirect assistance. The schedule of libel and harassment awards in the Appendix to Gatley on Libel and Slander (12th Edition) was also provided to me as a summary of recent awards.

45. Particular reference was made to the following cases:

    i) Appleyard v Wilby [2014] EWHC 2770 in which there was an award of £60,000 to respect of 9 separate publications, made in tweets and on a website, of allegations that the claimant police officer had befriended and protected a celebrity he knew to be a paedophile or rapist, misusing his position as a police officer to do so;

    ii) Hourani v Thomson [2017] EWHC 432 (QB) in which there was an award of £50,000 in damages for libel and £30,000 for harassment to a businessman who had suffered allegations of being implicated in the murder of a woman. These allegations were published during street demonstrations outside his house, on

placards and banners and in shouted slogans, as well as publication on Facebook, YouTube and Twitter; and

iii) Suttle v Walker [2019] EWHC 396 (QB) (a case to which I have made reference above) where there was an award of £40,000 in total for what Nicklin J described as a "serious and nasty case of online harassment" [58] which involved the publication of allegations of animal cruelty on Facebook and YouTube.

IV. Conclusion on damages

46. On the basis of the evidence I have summarised above, it is clear to me that the Defendant conducted an aggressive campaign of harassment which took place over a period of substantially over two years, and which continued after the proceedings were issued, and after the judgment on liability. In my judgment, the Defendant knew that it was causing alarm and distress because she had been told as much by the Claimants' solicitors, at least 3 times. The harassment took multiple forms, involving direct telephone and email contact, publication of distressing allegations to associates of the Claimants and publication to the world at large.

47. The defamatory allegations which were published were of the most serious nature, involving serious criminal offences (effectively, fraud) and conduct alleged to have caused serious physical harm. The allegations struck at the core of the Claimants' characters and reputations. Although the medium was not the national press, it was on a public forum accessible to all the world, and was targeted at those in whose eyes the Claimants' reputations matter the most.

48. There is also compelling evidence, which I accept, from each of the Second and Third Claimants of the serious alarm, distress and embarrassment suffered by them as a result of the harassment and libels.

49. In the circumstances, in my judgment a substantial award is merited in favour of both Claimants. Although each case must depend on its facts, I do draw some assistance from the case law I have summarised above. I also consider that, albeit marginally, the Second Claimant probably suffered overall more than the Third Claimant.

50. It seems to me that this case is perhaps not as serious as Appleyard and Hourani (although there is the added feature of repetitive conduct over at least 2 years). However, the case is of a more serious nature than Suttle.

51. Although one should not treat those cases as precedents (because each case depends on particular facts), there is much to be said from a Rule of Law perspective for an element of consistency in financial awards in combined libel/harassment cases. If it is appropriate to refer to a "range" in the cases cited to me (and which do seem to me to be the most relevant cases), it is between about £40,000 and £80,000.

52. I also bear in mind the free speech interests involved, which generally point towards a more conservative approach to libel awards. But to be balanced against that in this case is my view that on the harassment aspects this is a "top band" case. It would not be an exaggeration to describe the Defendant as having made the personal and professional

life of the Claimants intolerable when one considers the volume and nature of the material before me. Their right to private life protected by Article 8 ECHR is very much in issue.

53. In all the circumstances, I award the Second Claimant £65,000.00 and the Third Claimant £60,000.00 in damages as combined awards for both the libel and harassment causes of action.

V. The CPR 72.10 Application

54. CPR 72.10 provides as follows:

> "(1) If money is standing to the credit of the judgment debtor in court –
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> (a) the judgment creditor may not apply for a third party debt order in respect of that money; but
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> (b) he may apply for an order that the money in court, or so much of it as is sufficient to satisfy the judgment or order and the costs of the application, be paid to him.
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> (2) An application notice seeking an order under this rule must be served on –
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> (a) the judgment debtor; and
>
> (b) the Accountant General at the Court Funds Office.
>
> (3) If an application notice has been issued under this rule, the money in court must not be paid out until the application has been disposed of."

55. The Claimants are the judgment creditors of the Defendant in relation to the costs of the underlying claim ordered by Julian Knowles J. The monies paid into the CFO by the Trustee on 4 April 2019 remain in Court, as I have set out above. The Application Notice seeking payment out of those monies to satisfy the costs order has been served on the Defendant and on the CFO.

56. I am accordingly satisfied that the requirements of CPR 72.10 have been met, and it is appropriate that an Order be made that so much of the monies which are in Court as are required to satisfy the judgment debt are paid out to the Claimants. This can most conveniently be done by an Order that the monies are paid to the Claimants' solicitors.

57. To the sum of £95,744.86 ordered by Julian Knowles J should be added interest at the judgment rate of 8% (Judgments Act 1838 s.17 and CPR 40.8). As at the date of this judgment the total including interest is £103,446.41.

58. To that sum should also be added the costs of the two applications which I have summarily assessed in the rounded sum £36,360.00.

59. The total debt by way of costs (and interest) as at the date of this judgment is accordingly £139,806.41.

60. This total exceeds the sums held by the CFO and I direct that the totality of the sums held by the CFO be paid forthwith to the Claimants' solicitors on account of this debt.