Neutral Citation Number: [2020] EWHC 3182 (QB)

Case No: QB-2020-001553

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 November 2020

Before :

THE HONOURABLE MR JUSTICE NICKLIN

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Between :

Martin Glenn	**Claimant**
- and -	
Craig Kline	**Defendant**

- -
- -

Alexandra Marzec (instructed by **Farrer & Co LLP**) for the **Claimant**
The Defendant appeared in person

Hearing date: 13 November 2020

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Approved Judgment

I direct that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE NICKLIN

The Honourable Mr Justice Nicklin :

1. This is the judgment following an application made by the Claimant for judgment in default of an Acknowledgement of Service being filed by the Defendant. At the hearing on 13 November 2020, I refused an application by the Defendant for an adjournment and, after hearing the submissions of the parties, I granted judgment in default as sought by the Claimant. I reserved judgment on the question of whether the Court should grant an injunction to the Claimant and, if so, in what terms.

The Claim

2. The Claimant was the Chief Executive Officer of the Football Association from March 2015 to August 2019. The Defendant is described in the Particulars of Claim as being an Illinois-qualified lawyer who has lived and worked in the UK for several years. Between 2014 and 2017 he was the Assistant Director of Football and Director of Statistical Research at Fulham Football Club.

3. The Claimant's claim is for libel and harassment arising principally from posts by the Defendant on Twitter, but also from two emails, in the period from May 2019 to February 2020.

4. A detailed letter of claim was sent by the Claimant's solicitors to the Defendant on 14 February 2020. The Defendant's response – sent by email that same day – was "*sue if you like… I personally am trying to get things in court. I already asked you to sue several times, please do.*" The Defendant did not provide a substantive response. A subsequent letter asking whether the Defendant would accept service, including service of the Claim Form, by email, led to a response by the Defendant on 29 June 2020: "*Sue me already, Martin Glenn is done*" and the following further email on 30 June 2020:

> "How many days in a row do I need to publicly state that Martin Glenn is a criminal who intentionally enables child abuse?
>
> I told nearly every reported (sic) in uk yesterday. Will you pedophile protectors sue yet?
>
> I'll continue telling every major reporter in western world. I'll tell dan roan when we speak today.
>
> How can I get you guys to sue me?
>
> I'll send you an email later today with me simply reminding western press that Martin Glenn enables crime and covers up child sex abuse matters…"

5. The Claim Form, issued on 1 May 2020, was accompanied by Particulars of Claim dated 31 July 2020. I need not set out each of the publications complained of for the purposes of the present application. It is sufficient if I summarise the meanings attributed by the Claimant to the various Tweets and emails for the purposes of his claim in defamation. The main themes in those meanings are that the Claimant:

i) corruptly facilitated, and accepted bribes to cover-up and protect, fraud and money-laundering within football which was carried out by organised crime networks;

ii) was part of an international criminal conspiracy that permits organised crime to run English football and covered up the sexual abuse of children, racism, fraud, money-laundering and misogyny;

iii) had pushed through a fraudulent sale of Wembley stadium;

iv) sought to punish, bully and silence whistle-blowers like the Defendant to avoid exposure of his corrupt activities; and

v) had delayed his departure from the FA to ensure that his corruption was covered up.

6. The Claimant's claim in harassment alleged that the Defendant had pursued a deliberate and persistent course of conduct amounting to harassment of him which included the sending of the various Tweets and emails complained of in the defamation claim and a large number of other pleaded instances.

7. The Claim Form and Particulars were sent to the Defendant by post and by email on 31 July 2020, the Defendant having indicated on 2 July 2020 that he would accept service by email. On 10 August 2020, the Defendant sent an email to the Claimant's solicitors stating that he had "*not yet had the chance to read any of these documents or obtain an attorney, due to coronavirus*". He said that he would "*look to discuss timelines*" with the Claimant's solicitors and asked them "*not to rush ahead in order to take advantage of the pandemic*".

8. The latest deemed date of service of the Claim Form and Particulars of Claim was 4 August 2020. Although it is clear enough from the Defendant's email of 10 August 2020 that he had received the Claim Form and Particulars of Claim, a certificate of service has been filed (as required by CPR 6.17(2)).

9. The Defendant and the Claimant's solicitors exchanged several further emails on 11 August 2020 culminating in a request made by the Defendant that the Claimant's solicitors should "*agree a brief 3 weeks extension for [his] reply, and for [him] to organize representation, and then let's get on with it.*"

10. Having been served with the Claim Form and Particulars of Claim, by the latest, on 4 August 2020, the Defendant was required to file (at least) an Acknowledgement of Service by 18 August 2020: CPR 10.3(1)(b). He did not do so. On 26 August 2020, the Claimant's solicitors wrote to the Defendant to advise him that he was required to have filed an Acknowledgement of Service by 18 August 2020. The letter warned the Defendant:

> "If you do not now file (and serve on us) an Acknowledgement of Service (or Defence), our client will apply for judgment in default… We do not consider that there is anything further to discuss as to the progress of the claim (including the timeframe for your filing a Defence) unless and until you have indicated via the appropriate form whether it is your intention to defend the claim."

11. If the Defendant had filed an Acknowledgement of Service, then he would have had until 1 September 2020 to file a Defence: CPR 15.4(1)(b). If he required longer, he could agree an extension of time of up to 28 days with the Claimant or make an application to the Court.

The application for default judgment

12. The Defendant did not file an Acknowledgement of Service (or a Defence) by 1 September 2020. On 8 October 2020, the Claimant's solicitors wrote again to the Defendant. They advised him that, as he had not filed an Acknowledgement of Service (or a Defence), the Claimant would now apply to the Court for judgment in default under CPR Part 12. An application was required because the Claimant sought remedies that included an injunction: CPR 12.4(2)(a). The letter enclosed an Application Notice, draft order and witness statement in support. Still, the Defendant did not file an Acknowledgement of Service or Defence.

13. On 20 October 2020, the Claimant's solicitors provided the Defendant with notification from the Court that the Claimant's Application for default judgment would be heard by the Court on 13 November 2020.

14. On 6 November 2020, the Defendant responded by email to the letter of 20 October 2020 stating, "*I have just read this today*". He added that he had been "*entirely busy this month*" with other litigation and said: "*I need an adjournment, can we please discuss immediately arranging this at a date that I can prepare for.*" He suggested a hearing be fixed for December and that the pandemic had made his preparation and obtaining legal representation more difficult.

15. On 10 November 2020, the Defendant sent an email to the Court together with a document headed "*Application for Adjournment*", which set out the basis on which he wished to apply for the hearing fixed for 13 November 2020 to be adjourned. A reply was sent by the Court to the Defendant indicating that his application for an adjournment would be considered at the hearing on 13 November 2020.

The hearing: adjournment application

16. The hearing was conducted remotely – via MS Teams – on 13 November 2020. At the commencement of the hearing, the Defendant made his application for the default judgment application to be adjourned for at least 4 weeks. The grounds of this application – foreshadowed in the attachment to his email to the Court on 10 November 2020 – were:

    i) that he had insufficient time to prepare for the hearing and the Claimant's solicitors had been unwilling to discuss a "reasonable timeline" to enable the Claimant to prepare;

    ii) that he was facing other claims which he submitted might need to be consolidated with the claim brought by the Claimant; and

    iii) that the Covid-19 pandemic had impeded his access to law libraries and made contacting the Court difficult.

17. In relation to the first ground, the Defendant stated that he had been "*so busy with other matters that [he] had not yet had time to fully read [the] pleadings, obtain legal representation, or otherwise become ready for this hearing*". He placed particular reliance on his having been engaged in other court cases and hearings in the period from 20 October 2020. The Defendant has provided very limited information about these cases. From the case numbers he has provided, there appear to be two cases. One is said to relate to "IP rights" and the other to "privacy". The Defendant refers to the "privacy" claim as having a "penal notice". Ms Marzec's researches identified the "privacy" claim as a claim brought by Fulham Football Club Limited against the Defendant (CL-2020-000750). There is a judgment of Butcher J available on BAILII from 30 October 2020 relating to a hearing on 29 October 2020 ([2020] EWHC 2907 (Comm)). Ms Marzec points out that the Judge records that the Defendant did not attend the hearing: [4]. The parameters of that litigation are summarised in [2] and appear to be proceedings brought against the Defendant for alleged breaches of an injunction order dated 23 November 2018. A hearing of that committal application was listed for 2 days on 2-3 November 2020, and Butcher J directed that that hearing should take place in private. This 2-day hearing appears in the Defendant's list of commitments in the period from 20 October 2020. I do not know what has happened at that hearing. The Defendant's written note suggests that there was a further hearing on 13 November 2020, and the Defendant did mention at the hearing that he was anxious to get away to attend another engagement.

18. I am wholly unpersuaded that the Defendant has had insufficient time to enable him to prepare for this hearing or, for that matter, to read the Particulars of Claim and file an Acknowledgement of Service. It is to be remembered that the Acknowledgement of Service form is a very straightforward single page document. A defendant is required to indicate – by ticking the relevant box – whether s/he intends to defend all of the claim, part of the claim, or whether s/he intends to contest the jurisdiction of the court. The form requires to be dated and signed. It contains the following warning:

> "If you file an acknowledgment of service but do not file a defence within 28 days of the date of service of the claim form, or particulars of claim if served separately, judgment may be entered against you."

19. I accept that, before ticking any of the boxes, the Defendant needed to read and consider the Claimant's claim. The Particulars of Claim are contained in 47 paragraphs and run to 24 pages, but they are not complicated or difficult to understand. Essentially, they set out, in chronological order, the communications or posts of the Defendant which the Claimant contends defamed him or amounted to harassment. The Defendant's claim that he has not had time "*to fully read [the] pleadings*" is difficult to accept as credible. He has had from, at least, 4 August 2020 to consider the Particulars of Claim and, on 11 August 2020, in an email to the Claimant's solicitors, the Defendant stated: "*I've read your claim but not yet had time to obtain counsel.*" As to any attempts to obtain legal advice and representation, the Defendant has not provided any details or supporting evidence. It is difficult to accept that, had the Defendant made genuine efforts to obtain legal representation since early August 2020, he would not have been successful or at least be in a position to provide evidence of his attempts. The recent activity concerning other court cases only spans the period from 20 October 2020. The Defendant does not adequately explain why he was unable properly to consider the Particulars of Claim and file an Acknowledgement of Service prior to that date.

20. As to the second ground, the Defendant has provided very limited information and it is impossible for me to assess whether there are other claims in which there is a sufficient overlap of issues and/or parties to make it arguable that there ought to be some consolidation. That assessment is further hindered by the fact that, as he has not even filed an Acknowledgement of Service indicating an intention to defend the proceedings, or a Defence indicating on what basis he might do so, it is impossible to identify the issues that would arise in these proceedings. Although the Defendant has been fairly consistent in his communications with the Claimant's solicitors, and in his submissions to the Court at the hearing, that he wishes to defend his allegations, these statements have been made at a high level of generality. The Court is in no position to assess whether the issues/parties in one set of proceedings are such as to raise a real question as to whether the claims should be consolidated without the issues being identified clearly in the relevant actions.

21. Finally, the impact of the Covid-19 pandemic. Insofar as compatible with the proper administration of justice, the Court will take into account the impact of the Covid-19 pandemic when considering applications for the extension of time for compliance with directions, the adjournment of hearings, and applications for relief from sanctions: CPR PD 51ZA §4. The Defendant has argued that the pandemic has had an impact on the time he has had to prepare. I simply cannot accept that submission. The Application Notice was issued on 8 October 2020 and provided to him that day. On 20 October 2020, the Defendant was notified that the hearing would take place on 13 November 2020. In total, the Defendant has had 5 weeks to prepare for a hearing, at which the only real issues would be whether the conditions for the grant of judgment in default were met and, if so, what relief the court should grant. In terms of the opportunity to obtain advice and representation in relation to the claim, the Defendant has had since 4 August 2020, i.e. some 3 months. Even making due allowance for the current circumstances, that is ample time within which to seek legal advice and/or representation. The Covid-19 pandemic has challenged aspects of the delivery of the administration of justice in this country, but it has not caused the system to grind to a halt. Courts have continued to operate, and lawyers have continued to advise and represent clients. The Defendant has complained about difficulties in contacting the Court. It is not clear why he needed to do so. Filing an Acknowledgement of Service and/or a Defence is straightforward.

22. Overall, the Defendant has not persuaded me that the Court should grant an adjournment. His grounds, both individually and collectively, do not provide an adequate justification for such an adjournment. The history of this claim since it was issued shows a lack of genuine engagement and a degree of prevarication. From a person who had positively invited the Claimant to sue him, and who apparently relished being provided with an opportunity for a Court to adjudicate on his claims, his behaviour after the Claim Form was served is difficult to comprehend. To achieve his stated aim of legal proceedings in which the truth of his allegations and his evidence would be tested, all he had to do was file an Acknowledgement of Service and then a Defence.

23. No doubt reflecting a desire not to be vulnerable to the charge that he had obtained a "gagging" order against the Defendant by taking advantage of some technicality or the Defendant's inexperience as a litigant in person, the Claimant has shown a great deal of restraint by allowing the Defendant a substantial period after the deadline for the

Acknowledgement of Service had passed before finally making an application for default judgment. His solicitors could not have been clearer in their correspondence in explaining to the Defendant what he was required to do. The responsibility for judgment in default being granted lies entirely with the Defendant; his conduct is difficult to fathom.

Default judgment: the law

24. CPR 12.11(1) provides:

> "Where the 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."

25. Although, under this rule, the Court must consider the judgment to which the claimant is entitled, the effect of default judgment is that the pleaded facts are treated as established. If those facts support the cause of action, the Court need go no further. The purpose of the requirement for an application is either to enable the court to tailor the precise relief, so that it is appropriate to the cause of action asserted, or otherwise to scrutinise the application in particular circumstances calling for more than a purely administrative response. Within these parameters, the Court must make an assessment of whether the applicant is entitled to the default judgment sought, or to some lesser or different default judgment: ***Football Dataco Ltd -v- Smoot Enterprises*** **[2011] 1 WLR 1978** [16]–[19] *per* Briggs J.

26. Evidence going to the merits is not required. The relief granted will normally be sought and granted on the basis of the claimant's statement of case. That procedure is efficient and proportionate. Such a judgment is final and, to the extent it involves consideration of what relief is justified on the basis of the facts alleged in the statement of case, it does have an element of merits assessment: ***QRS -v- Beach*** **[2015] 1 WLR 2701** [53] *per* Warby J.

27. In ***Brett Wilson LLP -v- Person(s) Unknown*** **[2016] 4 WLR 69**, Warby J explained:

> [18] The claimant's entitlement on such an application is to "such judgment as it appears to the court that the claimant is entitled to on his statement of case": CPR r 12.11(1). I accept Mr Wilson's submission that I should interpret and apply those words in the same way as I did in ***Sloutsker -v- Romanova*** **[2015] EWHC 2053 (QB)** [84]:
>
> > "This rule enables the court to proceed on the basis of the claimant's unchallenged particulars of claim. There is no need to adduce evidence or for findings of fact to be made in cases where the defendant has not disputed the claimant's allegations. That in my judgment will normally be the right approach for the court to take. Examination of the merits will usually involve unnecessary expenditure of time and resources and hence [be] contrary to the overriding objective. It also runs the risk of needlessly complicating matters if an application is later made to set aside the default judgment: see ***QRS -v- Beach*** **[2015] 1 WLR 2701** esp at [53]-[56]."
>
> [19] As I said in the same judgment at para 86:

> "the general approach outlined above could need modification in an appropriate case, for instance if the court concluded that the claimant's interpretation of the words complained of was wildly extravagant and impossible, or that the words were clearly not defamatory in their tendency."

> Those instances of circumstances which might require departure from the general rule are not exhaustive, but only examples. I have considered whether there is any feature of the present case that might require me to consider evidence, rather than the claimant's pleaded case, verified by a statement of truth and uncontradicted by the defendants. I do not think there is any such feature. I have therefore proceeded on the basis of the pleaded case, both in my introductory description of the facts above, and in reaching the conclusion that the claimant has established its right to recover damages for libel, and to appropriate injunctions to ensure that the libel is not further published by the defendants.

28. Ms Marzec has properly submitted that the Court must consider s.12 Human Rights Act 1998 when considering any remedy to be granted to the Claimant. She submitted that s.12(3) was engaged and, as such, "*no such relief is to be granted 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*". I readily accept that the Court must have regard to s.12 in these circumstances (see ***Brett Wilson*** [33]), but I do not consider that s.12(3) is engaged. As explained by Warby J in ***QRS***, a default judgment is a final order. Once judgment is entered, there will be no trial. s.12(3) governs the position at the interim stage. Of course, where the injunction sought interferes with the respondent's right of freedom of expression, the Court will consider very carefully whether the facts alleged demonstrate that such an injunction is necessary and whether its terms are proportionate. But, in my judgment, s.12(3) does not operate to reimpose a merits assessment at the default judgment stage. The safeguard, for the respondent, is the ability to apply to apply to set aside or vary the default judgment, including the terms of any injunction order that is granted, under CPR 13.3.

Default judgment: decision

29. At the hearing on 13 November 2020, I granted judgment in default against the Defendant. I was satisfied on the evidence that the Defendant had been validly served with the Claim Form and Particulars of Claim. He had not satisfied the claim and had not filed an Acknowledgement of Service (or Defence) and the time for doing so had expired. As such, the conditions for default judgment were satisfied: CPR 12 PD §4.1.

30. This is not a case where, assessing the pleaded claim, the Court has doubts over its viability. Having considered the pleaded publications, relied upon for the defamation claim, I am satisfied that the meanings attributed to the publications are clearly (at least) tenable meanings that are seriously defamatory of the Clamant. In terms of the harassment claim, the pleaded case discloses a clearly (at least) arguable course of conduct that amounts to harassment of the Claimant and which, objectively judged, the Defendant ought to have known amounted to harassment. Neither pleaded claim contains a patent legal flaw or other impediment of the sort described by Warby J in ***Brett Wilson***. The Claimant is entitled to judgment in default.

Remedies: the Claimant's claim

31. In his Application Notice seeking default judgment, the Claimant sought three remedies consequent upon judgment:

    i) a final injunction to restrain further publication of further defamatory allegations against the Claimant and further harassment of him;

    ii) an order for damages to be assessed; and

    iii) an order under s.12 Defamation Act 2013 requiring the Defendant to publish a summary of the Court's judgment.

32. The only live issue for me to decide is the issue of injunction. Any assessment of damages will be adjourned to a later hearing to enable evidence to be filed and Ms Marzec has indicated that, if pursued, the Claimant will seek an order under s.12 Defamation Act 2013 when the damages are assessed.

33. The terms of the injunction sought are set out in a draft Order attached to the Application Notice seeking default judgment. Paragraph 2 of that draft seeks an order against the Defendant in the following terms:

> "A permanent injunction is granted restraining the Defendant from:
>
> (a) publishing or causing to be published the same or any similar defamatory allegations to those or any of those set out in the Schedule to this Order; or
>
> (b) pursuing any conduct which amounts to harassment of the Claimant including publishing or causing to be published any derogatory or defamatory allegations to similar effect as those, or any of those in the Schedule to this Order"

34. The Schedule essentially draws together the pleaded defamatory meanings from the various publications sued upon. It is not necessary to set them out in this judgment, I have summarised them in [5] above.

35. Insofar as it is required on a default judgment application, the evidence before the Court, including evidence of the further publication by the Defendant since the Claim was commenced, demonstrates that, absent an injunction, the Defendant is likely to publish further allegations of a similar nature against the Claimant. The injunction is a proportionate interference with the Defendant's right of freedom of expression. The legitimate aim that is pursued is the protection of the reputation of the Claimant against false and damaging allegations of misconduct. I am satisfied that an injunction should be granted.

36. At this point, I should reiterate that, insofar as any complaint is raised by the Defendant that he has not been given the opportunity to defend as true the allegations he has repeatedly made, this must be set against two points. First, judgment in default, and an injunction, have been granted against the Defendant as a direct result of his repeated and prolonged failure to engage with the Court's process and his failure to take the simple step of filing an Acknowledgement of Service (and a Defence). Second, if he contends that he has a defence with a real prospect of success, he can make an

application to set aside the judgment in default that the Court has granted to the Claimant. If he is successful in setting aside the judgment, then the injunction granted by the Court will also be discharged.

37. In principle, in terms of an injunction to restrain further defamatory publications, there is nothing fundamentally wrong with the approach that has been adopted by the Claimant in the draft Order. It is clearly rooted in, and limited to, the pleaded case upon which the Claimant has been granted judgment. However, my concern is that the form of wording sought by the Claimant is, in places, repetitive and over-complicated and therefore lacking in clarity. It should be capable of being simplified to produce terms that are plain and readily comprehensible whilst properly limited to the defamatory allegations in respect of which the Claimant has been granted judgment. At the hearing, the Defendant indicated that he would be prepared to give an undertaking to the Court in lieu of an injunction (obviously, without prejudice to any application he may make to set aside the judgment in default granted to the Claimant). I indicated that if such an undertaking were capable of agreement, then it would be an acceptable way of proceeding. If agreement is not reached, however, when this judgment is handed down, I will invite Ms Marzec to propose wording for an injunction in simplified terms and I will determine the final terms in which the injunction will be granted.

38. In respect of harassment, the nature of the tort (and the statutory defences available under the Protection from Harassment Act 1997 ("PfHA")) means that whether any particular act is, or amounts to, harassment of another is a highly fact-sensitive decision. In ***Canada Goose -v- Persons Unknown*** **[2020] 1 WLR 417** [78], I said this:

> "Whether someone is guilty of harassment and, if so, whether s/he has a defence under s.1(3) of the PfHA is a complicated and inherently fact-specific decision (see the discussion in [51]-[54] above). [An] interim injunction which prohibits the respondent from 'carrying out a course of conduct amounting to harassment' falls foul of the objection identified by Longmore LJ in [***Boyd -v- Ineos Upstream Limited*** **[2019] 4 WLR 100**] [39]-[40]. There can be (and often is) reasonable disagreement between lawyers as to what amounts to harassment (see [51] above). The terms of an injunction should not leave it to a layperson to make that difficult assessment him/herself, on pain of imprisonment if s/he gets it wrong. The position is not saved if the prohibition continues 'including in particular the following acts' which are then specified. The order must specify the particular acts, clearly and unambiguously, which the court is prohibiting."

39. That was dealing with interim injunctions, but the same principles would apply to the terms of a final injunction. By their nature, harassment injunctions present particular challenges and must be drafted with care.

40. In this case, because the acts sought to be restrained on the grounds of harassment are the same as those sought to be restrained on the grounds of further defamatory publications, nothing is added by the harassment claim. On the facts of this case, restraint of further defamatory publications will achieve what is sought to be achieved to restrain further harassment. In those circumstances, although the Claimant is being granted judgment in respect of both his defamation and harassment claims, nothing is added by the harassment claim to the terms of the injunction that would be granted in relation to the defamation claim.

41. For these reasons, and in summary:

i) the Court has granted the Claimant judgment against the Defendant in default of Acknowledgement of Service (and Defence);

ii) in the absence of agreement by the parties as to the terms of an undertaking to be given to the Court by the Defendant, then an injunction in appropriate terms will be granted following the handing down of this judgment;

iii) the Claimant's claims for the further remedies of (a) damages and (b) an order under s.12 Defamation Act 2013 will be adjourned, and I will give directions for the resolution of those outstanding issues; and

iv) if he considers that he has grounds to do so, the Defendant can apply to set aside the judgment in default granted to the Claimant by making an application under CPR 13.3. As I made clear to the Defendant at the hearing, it is important for him to note that, under the rule, "*in considering whether to set aside or vary a judgment entered [by default], the matters to which the court must have regard include whether the person seeking to set aside judgment made an application to do so promptly*".