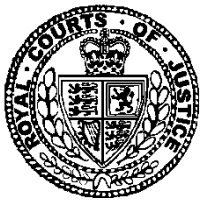

Neutral Citation Number: [2021] EWHC 135 (QB)

Case No: QB-2021-000136

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 January 2021

Before:

MR ADAM VAITILINGAM QC
(Sitting as a Deputy Judge of the Queen's Bench Division)

- -

Between:

(1) DOMESTIC & GENERAL GROUP LTD **(2) DOMESTIC & GENERAL INSURANCE PLC** **(3) DOMESTIC & GENERAL SERVICES LIMITED**	**Applicants**
- and -	
(1) PREMIER PROTECT HOLDINGS LTD **(2) ABDELHAK AKAYOUR** **(3) APEX ASSURE LTD** **(4) BELAL ALI** **(5) HOME PROTECT 365 LTD** **(6) PREMIER PROTECT 365 SL** **(7) RACHID EL HADDOUCHI** **(8) HICHAM ALAMI**	**Respondents**

- -
- -

MR NICHOLAS GOODFELLOW (instructed by **Domestic & General Group Limited**) for the **Claimants**
MR GIDEON ROSEMAN (instructed by **Helix Law, Solicitors**) for the **Respondents**

Hearing date: 21 January 2021

- -

INTERIM APPLICATION

Approved Judgment

In accordance with the Covid-19 protocol for handing down judgments, this judgment has been handed down by Mr Adam Vaitilingam QC remotely. The date and time for hand down will be deemed to be 21 January 2021.

Daily Transcript by John Larking Verbatim Reporters
One Cow Lane, Church Farm, South Harting, West Sussex, GU31 5QG Phone: 01730 825 039

Adam Vaitilingam QC :

1. This is an application for relief by three companies, each part of the Domestic & General Group, against the eight respondents. The first and second applicants are wholly-owned subsidiaries and the principal UK operating companies of the third applicant, which is a provider of appliance care and specialist warranty products. These products come into effect after the standard manufacturer's warranty has expired.

2. The Domestic & General Group is the leading product protection specialist in Europe, with 8.7 million customers said to exist in the UK and annual revenues approaching £1 billion. Their customers are typically individuals who have bought domestic appliances from well-known retailers and manufacturers, where the appliance comes with protection against breakdown for a period of 12 to 24 months. The customer buys an additional protection plan from Domestic & General to extend and enhance that protection. Plans are either sold in the name of Domestic & General or in the name of their clients, when they are known as, "White Labelled Plans", but in both cases it is Domestic & General who is the provider of the cover and the plans can be subscribed to, as I understand it, on a monthly or annual basis.

3. The applicants' case is that unsolicited sales calls were being made to their customers by non-Domestic & General companies. False information, they say, was provided to the customers to induce them into purchasing an additional plan and, having become aware of these calls, the applicants put in place monitoring of them via a computer system known as "ChitChat". That monitoring in turn has led them to the eight respondents.

4. The first and fifth respondents were incorporated in April of 2019 and registered in England. The second respondent is a sole director and shareholder of both. The third respondent was incorporated in England in 2020, with the fourth respondent its sole director and shareholder. The sixth respondent was incorporated in 2016 in Spain. Seven and eight are or have been the directors of respondent six. The four companies are together described as the, "PP 365 companies."

The allegation

5. The applicants' case is that the respondents used fraudulent misrepresentations to induce customers to pay for further protection for their home appliances when those customers already held cover with Domestic & General. What then is the alleged nature of the misrepresentations?

6. I have seen transcripts of calls to Domestic & General from their customers. They complain of being "scammed" by callers who have pretended to be connected to Domestic & General, persuading them to make a payment for a warranty. Most commonly, the caller has said that they are from or are associated with Domestic & General, that the home appliance cover has expired or is about to expire, that it has been cancelled or can be cancelled, that the caller can renew the cover, that the caller has access to the customer's payment details and/or that the caller can adjust the current premiums.

7. The calls are linked to the PP 365 companies either by the direct use of their name or by the use of a telephone number which connects back to the company. Further, there are links between the companies themselves. It is said by the applicants that the number of complaints from their customers has escalated significantly since June 2020, rising to over 200 per month in the last quarter of last year.

8. On the basis of these allegations, the applicants apply for, (a) an interim injunction to restrain the cold calling by the first to fourth respondents; (b) a preservation order in respect of call recordings, transcripts and training materials as against the first to fifth respondents; (c) an order for specific disclosure of call recordings from sample dates as against the first to fourth respondents, and training materials, including scripts, as against the first to fifth respondents; and (d) permission to serve the application on the sixth to eighth respondents outside the jurisdiction, and permission to serve Mr Alami by an alternative method.

9. In relation to the injunction that is sought, I have to apply the well-known test set out in *American Cyanamid*. Is there a serious issue to be tried? Would damages be an adequate remedy? What is the balance of convenience?

10. The applicants' case, on the basis of the reported calls, is that two economic torts have been committed: the first causing loss by unlawful means and, second, conspiracy to cause economic loss by unlawful means. I have considered the case of *Domestic & General v. Global Appliance Care and others* [2019] EWHC 1550, where Jay J considered the law in relation to a claim brought by these applicants on similar facts, but where the matter in fact proceeded on the basis of agreed undertakings, on the predicate that there were viable causes of action. Nonetheless, I am assisted by his analysis of the law in relation to these torts and I consider that each of the torts alleged are capable of being established here.

11. On the facts presented by the applicants, there is a clear prima facie case of wrongdoing against the first to fourth respondents, with clear evidence of misrepresentations being made to the applicants' customers - in particular, that the callers either are from or are closely connected with the applicant companies. Exactly what was said and whether any other misrepresentations were clearly made cannot be gleaned clearly from the hearsay reports given by customers, and the applicants do not, of course, yet have access to the call recordings themselves made on behalf of the respondents.

12. Damages would not, in my view, be an adequate remedy. The harm to the applicants' reputation is potentially irrevocable and the scale of any loss would be hard to assess given the fluidity of the ongoing warranty arrangements. Further, in my view, the balance of convenience is heavily in favour of my granting the injunction that is sought and, as the applicants point out, there is no prejudice to the first to fourth respondents in being restrained from making false representations as described in the draft order. There are the usual cross-undertakings in damages given by the applicants, who are plainly of means.

13. The third and fourth respondents are the only respondents represented today. They served a skeleton argument that was received moments before the hearing. They dispute that the applicants have a real prospect of success within the meaning of *American Cyanamid*. I disagree for the reasons set out above. I consider that there is

sufficient evidence at this stage to connect the third and fourth respondents to the fraudulent misrepresentations, while the evidence of likely financial loss and damage to reputation is plain.

14. On behalf of the third and fourth respondents, Mr Roseman draws my attention to the witness statement of Mr Cook, again filed moments before the hearing, which considers a website called Trustpilot, where it would appear that there are a large number of critical reviews of the applicants. He says that, in light of this material, the court should be cautious in assessing the prospects of success and questions of damage. I do not agree. I find limited assistance from the material contained within that website and, in any event, on the evidence which is already served, plainly it seems to me that the test under *American Cyanamid* is met.

15. Given the shortage of time before the hearing for the parties to discuss the terms of the proposed injunction, I gave time during the hearing for counsel to consider them together, and that resulted in some progress. The issues were narrowed between them in respect of which terms should be contained within the interim injunction. I now turn to those.

16. I make the interim injunction in accordance with the draft order at 1(a)(i) and (ii). I also make it in relation to (iii) and (iv), and (v), save that some wording has been added by agreement between the parties, to this effect: at the end of (v), to add these words: " ... (save that the respondents are permitted to request bank details from customers during any such call)." So far as (vi) is concerned, I have heard argument about whether the subparagraph should end at the end of the word "cancelled" and remove the words, " ... will cancel or are capable of cancelling ...". I agree with the respondents' submissions in respect of that. The words, " ... will cancel or are capable of cancelling ..." will be removed. Subparagraph (vii) is made in the terms of the existing draft.

17. I turn to the question of the preservation of evidence. I make an order for the preservation of evidence against the first to fifth respondents, to protect against action being taken by them to conceal their actions. None of these defendants has so far confirmed that it will preserve this material, and it seems to me that the risk of such action is inherent in the very nature of the fraudulent acts alleged. The order as against the fifth respondent (a company that is not subject to the interim injunction) is made on the basis of historic calls made on its behalf, and I am satisfied that the preservation order is appropriate in respect of this company.

18. In relation to the order for specific disclosure, I have heard considerable argument. I have considered the authority of *Roche Diagnostics v. Mid Yorkshire Hospitals* [2013] EWHC 933 (TCC) on the application of the principles of pre-action disclosure in a case that has already commenced. I have also considered paragraphs 16 to 18 of the third and fourth respondents' skeleton argument, to which I now turn.

19. The applicants' case is that this disclosure is appropriate here to dispose fairly of the anticipated proceedings and to save costs. They argue that disposing fairly of the anticipated proceedings can be achieved where the disclosure sought enables a statement of case to be better focused and thereby to avoid the cost and the delay which may be caused by amendment after disclosure. They rely on the case of *Hands v. Morrison Construction Services Limited* [2006] EWHC 2018 (CH), at paragraphs

31 and 70. So far as saving costs is concerned, they refer to the same case and say this requirement is met where pre-action disclosure may assist in avoiding the need for pleadings to be amended after disclosure.

20. The disclosure which is sought is of call recordings made by Premier Protect and Apex Assure from three sample dates, they say picked at random, namely, 1 September, 2 November and 1 December 2020, between 10 a.m. and 4 p.m. They say that, while the ChitChat records provide clear evidence of the underlying nature of the calls that were made, early disclosure of these call recordings will better enable the applicants(a) to plead its case as to the way in which fraudulent misrepresentations were made, and (b) to consider whether it should amend and plead and rely on any other calls in this action. They also seek disclosure of training manuals from Premier Protect, Apex Assure and Home Protect. The ChitChat records, they say, evidence a consistent style by the three companies, which suggests the use of training scripts, as is standard in the industry, and also that those scripts have been shared between respondent companies. They argue that the disclosure of the call scripts at this stage will better enable the applicants to plead their case as to conspiracy between the companies and to avoid the costs of amending at a later stage.

21. In his skeleton argument, very helpfully amplified and developed in oral submissions, Mr Roseman notes the relevant principles for pre-action disclosure. First, that the class of documents, or the documents themselves, should be carefully circumscribed and the application limited to what is strictly necessary; second, that an applicant must show that it is more probable than not that the documents are within the scope of standard disclosure should an action commence; and, third, that an applicant must demonstrate that the substantive claim is properly arguable and has a real prospect of success.

22. He argues that in this case the respondents have simply had inadequate time to deal with this application, to consider specifically the documents that they have in their possession, and that there is no prejudice to the applicants in this part of the application being adjourned. He refers me to the case of *Anglo Irish Bank v. West LB* [2009] EWHC 207, in which Blair J refused to grant a pre-action disclosure order and noted that, "the court was warned against ordering pre-action disclosure to encourage fishing expeditions to enable a prospective plaintiff to discover whether he has in fact got a case at all." In my view, that is a different case to this one and that the test, correctly set out by Mr Roseman in his paragraph 17, albeit articulated differently by the applicants, is plainly met.

23. I am satisfied here that the disclosure is appropriate to dispose fairly of the proceedings. It is not a fishing expedition; the claimant already has clear evidence of calls being made – from the ChitChat messages that it has had from its own customers – and these recordings cement that evidence, supporting it rather than being separate to it. Applying the factors set out in Roche, and having considered the competing arguments with care, it seems to me that the order for specific disclosure should be made, and I make it in the terms sought.

24. Finally, I turn to the application for permission to serve outside the jurisdiction pursuant to CPR Rules 6.36 and 6.37. The applicants must establish that, (a) the case against the sixth to eighth respondents has a real prospect of success; (b) that there is a good arguable case that the claim falls within one of the gateways in Practice

Direction 3B; and (c) that England and Wales is an appropriate forum for the claim against them to be tried.

25. I apply the test, in relation to (a), as set out in *ED&F v. Patel* [2003] EWCA Civ 472. Here, there is evidence of bank payments being made to Premier Protect 365 and there is evidence linking the seventh and eighth respondents, and I am quite satisfied that the claim does have a real prospect of success against these three respondents. As to (b), Practice Direction 3B provides two gateways that seem to me to apply here, namely paragraphs 3.1.9(a) and 3.1.3. I turn to these.

26. 3.1.9(a) provides a gateway when "a claim is made in tort where (a) damage was sustained or will be sustained within the jurisdiction". It is said that damage has been or will be suffered by Domestic & General in this jurisdiction because that is where the bank accounts of its UK-based business are located. Further or alternatively, the Applicants rely on paragraph 3.1.3, which provides a gateway where "a claim is made against a person (the defendant) on whom a claim form has been or will be served (otherwise than in reliance on this paragraph) and, (a) there is between the claimant and the defendant a real issue that it is reasonable for a court to try, and (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim."

27. Here, of course, a claim has been served on the first to fifth respondents. It presents a real issue that it is reasonable for the court to try, and the sixth to eighth respondents are proper parties to the claim, as alleged co-conspirators.

28. As to (c), it seems to me clear that England and Wales is the proper forum in which to bring the claim. The first to fifth respondents are resident here, the alleged deceptions have been carried out against customers based in this jurisdiction and the alleged loss is sustained in this jurisdiction as well.

29. I am asked to give permission to serve Mr Alami by an alternative method under CPR Rule 6.15 and 6.27, at the registered address of Premier Protect 365. I understand that it has not been possible to serve him at his residential address because that has not been ascertained, despite the claimants having taken all reasonable steps. It seems to me that there may be difficulties in effecting service at the registered address, as outlined by Mr Goodfellow during the course of the hearing. But those difficulties in themselves are not a bar to me giving permission for service to take place by an alternative method, and I give that permission here.

30. Given that the application in respect of the sixth to the eighth respondents is made *ex parte*, the applicants are, of course, under a duty of full and frank disclosure, requiring them to draw to my attention any features which might reasonably be thought to weigh against the making of the order. Mr Goodfellow has taken me through the points that he considers might be made in opposition to this application, and I am satisfied, having read his skeleton argument and having heard the points developed in court, that he has done so thoroughly and fairly, and that the points of opposition that he raises are, nonetheless, met.

31. I am asked to set a return date for the sixth to eighth respondents. Given the potential difficulty in serving those parties, the return date will be the first open date five weeks from today, with a time estimate, for now, of one hour.