



Neutral Citation Number: [2023] EWHC 3251 (KB)

Case No: QB-2022-000309

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION KB**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20/12/2023

**Before :**

**THE HONOURABLE MR JUSTICE MARTIN SPENCER**

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**Between :**

**GAP GROUP NORTH EAST LIMITED**

**Claimant**

**- and -**

**PAUL PALMER**

**Defendant**

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**Mr Andrew Crammond** (instructed by **Sintons LLP**) for the **Claimant**  
**Ms Romana Canneti** (instructed by **Kleyman & Co Solicitors**) for the **Defendant**

Hearing dates: 30th October - 8th November 2023

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## **Supplementary Judgment**

This supplementary judgment was handed down remotely on 20<sup>th</sup> December 2023 at 10am by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**THE HONOURABLE MR JUSTICE MARTIN SPENCER**

**The Honourable Mr Justice Martin Spencer :**

1. Further to my judgment in this matter dated 1 December 2023 (“the main judgment”), two issues have arisen in relation to the appropriate Order to be made arising out of that judgment. The first issue concerns the terms of the final injunction to be made against the defendant. The second issue concerns the appropriate costs order to be made.
2. In relation to the terms of the final injunction, the background is that on 20 January 2022 the defendant posted an article on the claimant’s website and Facebook page which included the following: “all sales data will now be forwarded to the tax authorities with all of the background files ...”. In the course of his evidence, the defendant was asked to what he was referring as “all the background files” and he confirmed that he was referring to documents in Word and PDF formats containing confidential information which he had downloaded to his laptop by sending himself approximately 60 emails with the documents attached: see paragraph 24 iv) of the main judgment. In those circumstances, the claimant wishes the final injunction to include a paragraph requiring the Defendant, among other things, to deliver up those emails. The defendant takes objection on the basis that he told the court in his evidence that he had already deleted those emails and that he had not retained access to them or forwarded any other emails to himself at any time.
3. In my judgment, it is appropriate for the Order to contain the provision sought by the Claimant, but with the caveat that the Defendant may explain in the affidavit he is to provide why he is unable to deliver up the emails, should that be his position. The Claimant shall then have liberty to apply should the Claimant consider that the Defendant’s explanation is inadequate or untenable. It follows that it will be incumbent on the Defendant in the affidavit to explain fully when and how the emails were deleted.
4. The second issue relates to costs. It is the Claimant’s position that the defendant should be ordered to pay the entire costs of and incidental to these proceedings on an indemnity basis with an interim payment of £100,000. The defendant contends that there should be no order for costs, alternatively that cost should be apportioned on a percentage basis to reflect the overwhelming success of the defendant in relation to the quantum of damages.
5. The legal framework is not disputed. Both parties make reference to the provisions of CPR 44.2. The standard position is that the unsuccessful party pays the successful party’s costs. The claimant submits that it is unquestionably the successful party and there is no proper basis to allow for a departure from the general rule in this case. In support of its position it relies on the following factors:
  - a. the claimant has obtained a significant and important final permanent injunction against the defendant;
  - b. the claimant has secured a judgment in damages: the defendant is the one “having to write a cheque”;
  - c. the fact that the claimant failed in relation to its principal claim for damages is irrelevant and changes nothing: the unsuccessful head of claim was an arguable one.

6. The defendant submits that the finalisation of the interim injunction was conceded before trial by the defendant and so was not an issue between the parties at trial. The claimant succeeded only on one of its four pleaded heads of claim whereby it was awarded no more than 3.6% of the amount originally claimed. The claim to interest was upheld but only to a limited extent.
7. Detailed arguments have been submitted to me by both parties in the way of written submissions and it is unnecessary for me in this short supplementary judgment to go through those arguments in detail. It is enough for me to indicate that in my judgment the claimant has been the successful party and is in principle entitled to its costs. Although I agree that the defendant's conduct has at times been unreasonable, I do not consider that it has been so unreasonable as to justify costs being awarded on the indemnity basis. A further reason for granting the claimant its costs in full is that, in my judgment, the claimant has made offers in the past which should have been accepted. I refer in particular to paragraph 34b of the defendant's written argument where it is stated:

“He felt unable to agree to the claimant's subsequent offer of 1 March 2022, because it required him to withdraw the allegations he had made in respect of Nigel Tomlinson, which the defendant continues to maintain were true.”

I have, of course, found that the allegations which the Defendant made against Nigel Tomlinson were untrue and it follows that the Defendant should have agreed to the offer of 1 March 2022. It is true that the sum of damages secured by the claimant is significantly less than that claimed, but the defendant could have protected himself in costs by making an appropriate Part 36 payment or offer.

8. The Order shall accordingly provide for the defendant to pay the claimant's costs on the standard basis. Although the claimant is entitled to an interim payment on account of costs, I consider that the sum claimed is too high and I order an interim payment in the sum of £50,000.