Neutral Citation Number: [2020] EWHC 2410 (QB)

Case No: F90BM169

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Date: 17/07/2020

Before :

HHJ SHETTY SITTING AS A JUDGE OF THE HIGH COURT

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Between :

PERTEMPS MEDICAL GROUP LIMITED **Claimant**

- and –

IMRAAN LADAK **Defendant**

- -
- -

Andrew George QC (instructed by **Harrison Clark Rickerbys**) for the **Claimant**
The Defendant appeared in person

Hearing dates: 16 and 17 July 2020

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JUDGMENT

HIS HONOUR JUDGE SHETTY :

1. In this hearing, the court is concerned with whether Imraan Ladak has committed a contempt of court by breaching an interim injunction granted on 19 July 2019 by His Honour Judge Worster (sitting as a High Court Judge). The Claimant alleges that between 14 August 2019 and 30 August 2019, Mr Ladak breached the interim injunction on six specific occasions by way of six different emails sent to diverse individuals.

2. The interim injunction arose in an action by Pertemps Medical Group Limited ("PMG") in which it claims that Mr Ladak (its former Chief Executive Officer), has breached contract and pursued a campaign of harassment against the company and its senior directors.

3. The interim injunction ordered, amongst other things, that Mr Ladak should not:

1.1 make adverse or derogatory comments about PMG, its directors or employees;

1.2. do anything that might bring PMG, its directors or employees into disrepute; and

1.3 harass any individual for the purpose of persuading PMG to provide money, assets or any other benefit to Mr Ladak.

4. It was also ordered that in the event that Mr Ladak intended to exercise his rights under the Employment Rights Act 1996 to make a protected disclosure, he should first give PMG's solicitors 14 days' notice of his intended disclosure stating the purpose and intended form of disclosure, and to whom it would be made. If PMG objected to such disclosure, the judge ordered that Mr Ladak should not make it save with the permission of the court.

5. These committal proceedings have a long procedural history and it is not necessary to set it out in full. However, part of that history will be dealt with because it is relevant to a preliminary decision concerning whether the court should proceed in Mr Ladak's absence on the first day of the hearing.

PROCEEDING IN THE DEFENDANT'S ABSENCE

6. The hearing was originally listed on 8 October 2019 before Jeremy Baker J at the same time as a return date for the interim injunction. The defendant attended without legal representation and invited the court to adjourn the

hearing in order to obtain such representation and serve a draft Defence. The court agreed to adjourn the return date and the application of committal. The next hearing was on 29 January 2020 before Pepperall J. The defendant again attended without legal representation. Although the injunction was continued, the contempt of court application was adjourned for a second time. Pepperall J specifically said at Paragraph 7 of his judgment that :

> "Plainly I cannot tie the hands of the next judge hearing the committal application, but Mr Ladak should be aware that this is likely to be his last opportunity to obtain legal representation. While the Court of Appeal has repeatedly stressed the importance of affording a contemnor a proper opportunity to obtain representation, there are limits to the court's patience. Further, there is in any event a proper public interest in not unnecessarily delaying the determination of proceedings"

7. The court provided the defendant with a booklet identifying a number of local solicitors who provide legal aid services. The application for committal was subsequently listed for a 2-day hearing on 28 and 29 April. However, on the defendant's application and because of the situation over the COVID-19 pandemic, that hearing was adjourned to 16 and 17 July 2020.

8. The notice of hearing was sent out to Mr Ladak. There is a copy of this at divider 17 of Bundle 1. The notice is dated 8 June 2020. Should there be any doubt concerning Mr Ladak's awareness of today's hearing, an e-mail was sent by Ms Anna Painter, the diary manager for this court, on Monday 13 July 2020 which said as follows:

"Dear Mr Ladak

Please can you confirm how many attendees including yourself will be attending the hearing on Thursday and Friday (16 & 17 July 2020) for your side.

Please can you provide this information no later than 4:00 pm tomorrow (Tuesday, 14 July 2020).

Many Thanks

Kind Regards

Anna Painter"

9. It is reported to me by Ms Painter that Mr Ladak did actually call her on 14th July. In that conversation, he expressed his surprise that it was an 'in person' hearing. He was told it was and that committal proceedings can have serious consequences including prison. Mr Ladak confirmed he had two advisers who would attend with him.

10. There was no attendance by Mr Ladak for a 11am start. In the absence of any reason for his absence, I gave Mr Ladak a further indulgence and did not actually sit until around 11.30. By that time, Mr Ladak was still not present. Mr George QC made an application for the court to proceed in Mr Ladak's absence. Mr George drew to my attention the case of *Pirtek (UK) Limited v Robert Jackson* [2018] EWHC 1004 (QB) in which Warby J considered whether proceedings should be adjourned. In this case he directed himself to previous authorities such as *Calderdale and Huddersfield NHS Foundation Trust v Atwal* [2018] EWHC 961 (QB) which was derived from *R v Jones* [2003] 1 AC 1 (HL) and *Sanchez v Oboz* [2015] EWHC 235 (Fam).

11. I considered the principles and decided to proceed in the defendant's absence. Although I gave brief details in an extempore judgment, in effect my reasons (in addressing criteria and separate considerations) were as follows:

(i)- reason why the respondent was not present. No reason was given. I inferred that Mr Ladak simply did not want to come having known of the date of the hearing and confirming the same on the day before.

(ii) whether an adjournment might mean the respondent turns up? Given the absence of reasons, there was no guarantee or assurance that Mr Ladak would attend. The hearing had been adjourned on 3 different occasions.

(iii) How long any adjournment would need to be? This is tied up with (ii) above. There was simply no way of knowing whether a short or lengthy adjournment would cure the problem of Mr Ladak's attendance given the absence of reasons.

(iv) the evidence as to the defendant's wish to be legally represented. The court and the Claimant had done a lot to direct Mr Ladak towards instructing lawyers with the assurance that he was entitled to non-means tested legal assistance. He had not taken advantage of this and had shown no enthusiasm to be represented.

(v) the interests of the applicant and the public in the expeditious resolution of the issue. There had been 3 adjournments. There is a clear public interest in allegations like this being determined expeditiously and close to the time of alleged breach. These matters go back almost 12 months. The defendant would of course be at a level of disadvantage in not being able to present his

version of events. In making a short but non-decisive determination of Mr Ladak's case or defence, it is difficult for me, in the absence of skeleton argument or witness statement from the defendant, to understand what his case is. It does not seem that he is disputing sending the emails which are the subject of the complaint. The committal proceedings are not subject to me determining the truth or falsity of the defendant's allegations against the Claimant. To that extent, although there is some prejudice to the defendant, the simplicity of the issues means that there seems relatively little that the defendant could further contribute. As I have alluded to, Mr Ladak has never complied with directions concerning the filing and serving of a skeleton argument.

For all these reasons I decided to proceed. However, I then received a further email from Mr Ladak (dated 16 July 2020 at 12.11). It apologised and said he was unable to attend but could not share the reasons openly with the claimant. He said he was able to attend tomorrow. He would then be in a position to explain.

12. That email came in the middle of Mr George's submissions. I decided that I would continue to hear Mr George's submissions. The defendant could attend on 17 July 2020 and I would provide him with a summary of what had happened. Mr Ladak could give evidence and/or make submissions if he wanted to. I would then make a decision but I would not re-start the hearing for Mr Ladak's convenience. The court's resources are limited. This is especially pertinent in the current environment when careful consideration has to be given to levels of staffing, which court rooms can be utilised, when

cases can be listed and when delays in justice are likely to be particularly prevalent.

13. Mr Ladak did attend on the second day of the hearing. No substantive reason was given for his absence save that he was busy with business affairs on the previous day. Mr Ladak was reminded of his right to remain silent and not to give evidence. He was reminded of his privilege against self-incrimination. He was also reminded that an inference or conclusion could be drawn from his silence if he chose not to give evidence. He was further asked if he intended to obtain legal advice. He declined that.

THE EVIDENCE

14. Mr Thomas Williams, a Solicitor on behalf of Harrison Clark Rickerbys Limited (HCR) gave evidence in which he confirmed the contents of several sworn affidavits. The primary affidavit was dated 13 September 2019. I gave permission for him to be recalled on day 2 so that Mr Ladak could ask him questions. Mr Williams' affidavit was in effect a consolidation of material which is not in dispute. It details and exhibits emails, correspondence and the company structure of the Claimant/Applicant. There were very few if any relevant questions directed at him by Mr Ladak and I emphasise that this case does not, in any event, turn on the credibility of Mr Williams because the relevant considerations in the case are whether or not

there was an injunction; whether specific emails were sent by Mr Ladak; and whether the emails constituted a breach of that injunction.

15. Mr Ladak also gave evidence. In the course of that evidence he confirmed that he had sent the emails in question. He had reservations about the terms of the injunction. He thought that because the emails were sent to specific individuals, that they were not public statements and therefore did not breach the injunction. His evidence persistently focussed on whether he thought he was right to do what he did, as opposed to whether he was in breach. He also devoted much of his evidence despite numerous attempts to refrain him, on a conspiracy to defraud the NHS being perpetrated by the Claimant and several other organisations that it had colluded with. On several occasions he accepted that 'technically there were breaches.'

THE ISSUES AND THE LAW

16. It is not in dispute that Mr Ladak was subject to the terms of the injunction that I have recited at paragraph 3 of this judgment. It is not in dispute that Mr Ladak wrote the emails that are the subject of these committal proceedings. The sole question is whether the emails breach the terms of the injunction.

17. As was said in *Sage v Hewlett Packard Enterprise Company* [2017] EWCA Civ 973 by Henderson LJ at paragraph 35:

"….I would also add that it is in my view a salutary discipline for any judge who is delivering or writing a judgment on a committal application to

set out each relevant ground of committal before proceeding to consider whether it is made out on the evidence to the criminal standard of proof."

18. Therefore, I will go through every relevant email and the evidence on that email. I will then decide whether there has been a breach of the terms of the injunction.

19. The standard of proof is the criminal standard. In other words, the court has to be sure that the email in question was in breach of the terms of the injunction. The burden of proof is on the Applicant/Claimant. Although there is some conflicting authority on the point, the law is that the respondent's motive for a breach may be relevant to penalty but he cannot argue that his intention was not to breach/disobey or his intention was justified if he did breach. That is distinct from whether something is an intentional act.

20. There will be a certain amount of focus on whether the words used by Mr Ladak were adverse or derogatory about the Claimant, its directors or employees. The word derogatory as defined in the Oxford Dictionary is as follows:

'lowering in honour or estimation unsuited to one's dignity or position; deprecatory, disrespectful, disparaging. If something is said which lowers the person spoken about in honour or estimation or is critical, it is disparaging and derogatory whether or not it is true.'

The last sentence above is particularly important. It is immaterial whether or not the matters directed are true or not.

DID MR LADAK BREACH THE INJUNCTION IN THE SIX EMAILS?

21. The first email dated 14 August 2019 11.54. This was sent to John Staden, James Meazza and Adam Parrish. It cc'd 16 other people. A table of recipients is set out in Mr Williams' affidavit at P82-83 (page 4-5 of the affidavit). Many shareholders and employees of the Claimant received this. Other personnel of the Claimant's subsidiaries or related companies were included. This email is reproduced at P184. Excerpts include the following:

> "Anyway, as you know, a widely circulated letter dated 23 July 2019 was written by HCR [the Claimant's solicitors] and denied allegations which you knew were true and made lots of false or misleading claims. Claims which you have repeated to all sorts of people including our employees.
>
> As if that was not enough, you tucked away the compliance team and ordered them to commit crimes during the HTE audit. Crimes which have been recorded.
>
> If you are going to cheat the NHS, your candidates, your fellow directors, investors and everyone that has built a company that you were given the keys to – then do it yourself…
>
> ….I have held off my high court submission, statement to the industry and legal proceedings in response to the letter because they will sink to much which is not proportionate to the three criminals who have caused this entire situation with their lies.

> If you are not sacked or do not resign or there is no confirmation to the market from you three or Pertemps taking responsibility and clearing my name, be warned that my awaiting response will have to be executed.
>
> Oh and finally, the man who knocked on a door in Walton Park was told what would happen the next time someone knocks on that door. Mrs Parrish will get her doors knocked. And then Mrs HeslaMeazza. And then Lynne. It is only fair they get hand delivered communications too."

22. The Applicant claims that this email breaches clauses 1.1, 1.2 and 1.3.

23. Mr Ladak's evidence about this e-mail and others did not appear to intend to establish a defence. He agreed he sent it. He agreed he sent it on the same day and within a short time of being served the injunction by a process server. At first Mr Ladak intimated that the terms of the injunction were agreed without his knowledge because Counsel had drafted terms of HHJ Worster's order. I found this unconvincing and in any event academic. Mr Ladak was reminded that Counsel were often given the task of drafting an order which reflected the judge's decision but when the court seal was put on the approved order, then it is an order of the court. Mr Ladak then claimed that he thought the restriction was on making derogatory statements in the public domain and genuinely did not believe he was breaching it by email statements. This did not amount to a defence and was difficult for me to accept in any event. This was because there were a number of references in the papers and in the

pleadings to the very same kind of correspondence being the reason that the applicant made the application in the first place. In cross examination he repeated the assertion that he thought the prohibition was about public statements. He said he thought he was allowed to write to fellow shareholders and directors. Later in his evidence and closing submissions, Mr Ladak appeared to accept in general terms that "technically there are breaches" but he did not think he was in contempt of court.

24. In my judgment, these matters amount to adverse or derogatory comment about the Claimant, its directors or employees. Derogatory comments include referring to the recipients as 'three criminals'; cheating the NHS and committing crime. They bring the same personalities into disrepute. There is an allusion to benefit to the Defendant in the section concerning 'clearing my name'. I am satisfied on the criminal standard of proof that this email breaches two prohibitions imposed by the injunction at 1.1, and 1.2. In respect of clause 1.3 which prohibits Mr Ladak harassing any individual for the purpose of persuading the Claimant to provide money, assets or any other benefit to the Defendant, I am not as clearly persuaded. 'Harassing' is defined in the Protection Against Harassment Act 1997 in non-exhaustive terms as "References to harassing a person include alarming the person or causing the person distress". The dictionary definition is "behaviour that annoys or upsets people." Counsel for the Applicant submits that the benefit is set out in the context of requesting the Claimant to clear his name. The original context of the injunction was that Mr Ladak was asking for benefit in the form of £20,000 which he claims was owed to him. Here the benefit of 'clearing his name' is less clear and may be more bound up in his understanding that the industry

may have had a certain view of Mr Ladak given his resignation as CEO of the Claimant. I am not convinced to the criminal standard that clause 1.3 was breached in the circumstances even though I accept that it is certainly arguable that the email constitutes harassment.

25. I should also add that I accept Mr Ladak's evidence concerning 'knocking on doors' that he was referring to his annoyance at being served documents personally by a process server. The comment in the email is a reference to this. Whilst it may have been ill advised or intemperate (and no criticism of the process server can be justified), it was not, in my judgment, behaviour which harassed any individual for the purpose of persuading PMG to provide money, assets or any other benefit to Mr Ladak. It was simply reactionary to the process of him being served a court document rather than threatening. From the context of the litigation, it is not the kind of behaviour that the injunction was intending on prohibiting or governing. However, by virtue of the proven breaches of clauses 1.1 and 1.2, this part of the decision is of marginal significance.

26. <u>The second E-mail dated 28 August 2019 13.35.</u> In context, this email responded to a letter from HCR. That letter, to be found at P186, reminded the Defendant of the injunction and alleged that the Defendant was in breach of it by virtue of the 14 August email mentioned above. The defendant's response was sent to the Claimant's solicitors but also cc'd in Gary Snart, who is a

director of Total Workforce Solutions at Health Trust Europe LLP. This is a significant customer of the Claimant's subsidiary PML. The email states that:

> "The letter has now been proven to contain dishonest and misleading information and an immediate clarification to all Health Trust Europe customers must be made.."

27. The email does refer to the solicitor's letter in turn (it being signed by HCR). However, it is clear it is alleging dishonesty and misleading information on behalf of the Claimant. Mr Ladak did not articulate a defence to this allegation. He indicated that Mr Snart was aware that his complaints against the Claimant had been proven by an audit. As I have mentioned and as I reminded Mr Ladak, the truth or falsity of a statement does not affect whether something is derogatory. By bringing in Mr Snart, and accusing HCR as the mouthpiece of the Claimant, its purpose was to pass adverse or derogatory comment on the Claimant by alleging dishonesty on the Claimant's part. I am satisfied on the appropriate standard of proof, so that I am sure that the email contravened term 1.1 of the injunction. It does not make any difference that the email was sent to HCR as opposed to the Claimant directly. Nor does it make any difference that it refers to correspondence from the Claimant's solicitors. The purpose was to make adverse comment on the Claimant by this mechanism and that intent was clear from it being cc'd to Mr Snart.

28. The third Email dated 28 August 2019 at 17.05. This email forwards the above email to twelve more recipients which include many of those who received email 1. It also states:

> "…
>
> Word of advice- threatening competitors was not a great move either. Now they are digging and reporting too. Not to help me. But to help their clients who are very thankful."

29. Mr Ladak claimed that he wrote this because he was aware that the injunction had been shown to various people by the Claimant and its directors and agents (including its solicitors). In effect he was claiming that he wanted to redress the balance. There is no exemption for this type of communication in the terms of the injunction. I find on the appropriate standard of proof, that the allegation of 'threatening competitors' is an adverse or derogatory comment about the Claimant, its directors or employees. It is a breach of 1.1 of the injunction.

30. <u>The 4th Email dated 30 August 2019 16.53.</u> It was addressed to 13 recipients including, once again, Mr Snart. It forwards previous emails nos 2 and 3 above. It states as follows:

> "Everyone in receipt of this email is in no doubt that the letter circulated by HCR is now without any doubt a pack of lies.
>
> HCR must issue a clarification detailing which allegations are denied, in light of the discoveries made by HTE this month…

> Therefore a communication will be sent to all Health Trust Europe customers next week in response to the letter – in relation to the lies told by HCR."

31. Once again, Mr Ladak's evidence and explanation was that he did not feel that the email he sent was public and he did not feel that he was breaching the injunction. He explained that 'nothing he said was untrue.' I am satisfied on the standard of proof so that I am sure that this email was adverse or derogatory comment about the Claimant which was prohibited under 1.1 of the interim injunction. That is because it alleged the Claimant was circulating (through HCR) lies.

32. The 5th Email dated 30 August 2019 17.30. This was sent to 12 recipients. It states as follows:

> "I've taken Gary Snart out for obvious reasons.
>
> I have seen a video, listened to recordings and seen pictures of internal emails which prove that during the audit:
>
> Multiple fraudulent activities were found including amendment of documentation during the actual audit of files selected.
>
> Attempts were made to make up false reasons for this.
>
> Senior management instructed employees to assist
>
> The auditors were fully aware of some of these practices

Shareholders responsible for instructions HCR know this..”

33. Mr Ladak’s explanation was the same as for e-mail four. There are numerous comments which are adverse or derogatory about the Claimant, its employees and directors. I am satisfied on the appropriate criminal standard that this email breaches 1.1 of the injunction. The derogatory comments includes alleging fraud and falsification on the part of the Claimant.

34. The 6th Email dated 30 August 2019 at 17.35. This email was sent to 12 recipients. It forwards previous emails but also makes the following assertion:

> “Oh I forgot to include the unhealthy people Directors but as HCR own that company I’m sure they will let every concerned know.
>
> Someone said I should genuinely be concerned about a contract being put on me. I replied not to worry, it would fallout anyway”

35. This is an assertion by the Defendant that he should be genuinely concerned about a contract to kill him being put on him (by inference from the Claimant or its directors/employees). Mr Ladak claimed that the contract would be from the Health Corporation of America which he claimed was involved in a bigger fraud on the NHS. I find this explanation unconvincing because references to hit men had already been made by Mr Ladak vis-à-vis Mr Tim Watts who is at the centre of this case and who is a central figure of the Pertemps group. It is clearly derogatory and adverse comment by the

Defendant by suggesting that the extent to which the Claimant would go to silence him could be an attempt on his life. It also forwards previous emails making the same comment/adverse assertion that I have described above. I am satisfied on the criminal standard that paragraph 1.1 of the injunction has been breached by the defendant.

CONCLUSION

36. Therefore, I have come to the conclusion on the criminal standard of proof that the Defendant has breached the terms of the injunction dated 19 July 2019 on six occasions. He is guilty of a contempt of court. The next step is to consider the sanction.

37. In reserving judgment I had indicated that the next hearing could be used to determine sanction and could be a further suitable time for the defendant to obtain legal representation, and for the parties to prepare submissions on the appropriate sanction in the circumstances.

His Honour Judge Rajeev Shetty

28 July 2020