Neutral Citation Number: [2021] EWHC 2264 (QB)

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

Royal Courts of Justice Strand, London WC2A 2LL

Date: 06/08/2021

Before:
MR JUSTICE KERR

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Claim No. G45YJ890

BETWEEN:

JOHN CAINE

Claimant / Respondent

-and-

FACEBOOK IRELAND LIMITED

Defendant / Applicant

Claim No. QB-2017-2712 (formerly HQ17M01967)

AND BETWEEN:

JOHN CAINE

Claimant / Respondent

-and-

(1) ADVERTISER AND TIMES LIMITED
(2) EDWARD CURRY

Defendants / Applicants

-and-

FACEBOOK IRELAND LIMITED

Applicant

Claim No. QB-2018-006164 (formerly HQ18M02612)

AND BETWEEN:

JOHN CAINE

Claimant / Respondent

-and-

(1) EDWARD CURRY
(2) CAROLINE WOODFORD

Defendants / Applicants

-and-

FACEBOOK IRELAND LIMITED

Applicant

Claim No. QB-2019-001263

AND BETWEEN:

JOHN CAINE

Claimant / Respondent

-and-

(1) EDWARD CURRY
(2) CAROLINE WOODFORD

Defendants / Applicants

-and-

FACEBOOK IRELAND LIMITED

Applicant

- -

MS CLARA HAMER (instructed by **White & Case LLP**) for the **Applicant Facebook Ireland Limited**
MR EDWARD CURRY (**Defendant/Applicant**) **in Person** and on behalf of **MS CAROLINE WOODFORD** and **ADVERTISER AND TIMES LIMITED (Defendants/Applicants)**
MR JOHN CAINE did not appear and made written representations **in Person**

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APPROVED JUDGMENT

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MR JUSTICE KERR :

Introduction

1. I have before me today no less than seven applications for civil restraint orders. Four are brought by Facebook Ireland Limited (**Facebook**), three of them as intervener in proceedings against others; and the other three are made by defendants in actions brought against them by the respondent to the seven applications, Mr Caine.

2. Mr Caine has not appeared at the hearing before me today. He sent an email to the court yesterday late afternoon, after hours, explaining that he wished to rely on written documents recently submitted, which I have seen. He expressed some dissatisfaction and said he would have liked more time to prepare, but did not, as I read his email, apply for an adjournment. The email concluded with the observation that he would "await the Court's decision and ruling."

3. Mr Edward Curry, the first defendant in some of the claims, appeared today on behalf of himself, for his sister Ms Caroline Woodford, the second defendant in some of the claims, and for the company of which they are co-directors, Advertiser and Times Limited (**ATL**).

4. One of the seven applications, the one on which I shall concentrate, is for, (among other things) a general civil restraint order (**GCRO**) and associated relief. That application is brought by Facebook against Mr Caine in an action which has been proceeding in the Bournemouth County Court against Facebook. The application is supported by Mr Curry, Ms Woodford and ATL.

5. The latter also bring their own applications to extend the duration of three extended civil restraint orders (**ECROs**) already made. I do not find it necessary to set out seriatim the detail of each of the seven applications. The three ECROs were made against the respondent, Mr Caine, by Mr Richard Spearman QC (sitting as a Deputy High Court Judge of this court), each for a period of two years. He gave his judgment on 23 August 2019; see *John Caine v Advertiser and Times Limited and others* [2019] EWHC 2278 (QB).

6. The three ECROs are due to expire on 23 August 2021, unless I extend them. I can also make a GCRO for up to two years. I am asked to do so, or alternatively to extend the three ECROs for a further two years and to grant certain ancillary relief.

The Parties

7. Facebook is a company incorporated under the laws of the Republic of Ireland which operates and controls the well-known social media website, facebook.com. Mr Caine is a businessman based in Hampshire, England. He is a litigant in person who has brought many claims and applications over the

past decade and more, against a wide range of parties. Mr Curry and Ms Woodford are the co-directors of ATL, a newspaper publishing company.

8. Among Mr Caine's illustrious litigation opponents are many public bodies; for example, the Chief Constable of Dorset, the Registrar of Companies, a district council, a town council, two government ministers, a magistrates' court, the Parliamentary Commissioner for Administration, the Crown Court at Southampton, the Crown Prosecution Service and the Police and Crime Commissioner for Hampshire.

The Claims

9. The ECROs were made arising from three of Mr Caine's actions. The first (**claim 1**) was brought against Mr Curry and ATL in 2017. It arose from an article published by ATL in May 2016, headlined "*Man waged vendetta against tyre firm after accusing staff of theft*". That article followed Mr Caine's conviction on 9 May 2016 at West Hampshire Magistrates' Court of an offence of using threatening or abusive words or behaviour or disorderly behaviour. The conviction arose from an argument between Mr Caine and staff at a local garage, whom he accused of stealing items from his car.

10. The second claim (**claim 2**) was brought against Mr Curry and Ms Woodford in 2018. It alleged defamation and malicious falsehood for publishing an article on a Facebook page called "*New Milton Watch - The Truth*". Material on that page criticised other material on another Facebook page set up by Mr Caine called "*New Milton Watch*". A debate subsequently ensued, the detail of which I will not set out, over whether Mr Curry and Ms Woodford had rendered themselves liable in defamation or malicious falsehood by "liking" the Facebook page *New Milton Watch - The Truth*.

11. The third claim (**claim 3**) was again brought against Mr Curry and Ms Woodford in April 2019. I need not dwell on it, for it was later found to assert substantially the same facts as claim 2, which by then had been struck out.

12. A further claim was also brought by Mr Caine in June 2019 (**claim 4**). That claim was brought against Mr Curry and ATL. It asserted, again, libel and malicious falsehood in respect of the article which had featured in claim 1 following Mr Caine's conviction of a public order offence. It also asserted libel and breach of the Contempt of Court Act 1981 arising from a further article, published by ATL in August 2018 headlined "*Libel claimant facing huge costs bill after court ruling*".

Previous "Totally Without Merit" Findings

13. There have been many such findings. The details of those known to Mr Spearman and drawn to his attention when he gave his judgment are to be found in that judgment and I need not repeat them here. Ms Hamer, for Facebook, drew my attention this morning to a handful of further totally without merit findings pre-dating Mr Spearman's judgment, of which Facebook had not been aware at the time of the hearing before Mr Spearman.

14. I accept, on the voluminous evidence before me, that there have been at least 20 occasions on which, over the past 11 years, Mr Caine has issued a claim or made an application found to be totally without merit.

15. Mr Spearman's judgment records that claims 1, 2 and 3 were each struck out or permanently stayed. On 29 October 2019, Master Davison declared claim 4 to be "totally without merit" and he struck it out and entered summary judgment in favour of the defendants. He commented in his judgment (at [4]) that when bringing claim 4, Mr Caine had been aware that about five weeks later a judge would consider whether to make an ECRO against him, Mr Caine.

16. Master Davison commented in the same paragraph:

> "The Claimant knew that that was to be considered and it appears to me that he issued this claim at the time that he did in order to avoid the consequences of the ECRO. (The ECRO would have prevented the Claimant from making this claim without first seeking permission and such permission would quite plainly not have been granted.)"

Attempts to Appeal and Costs Orders

17. On 5 December 2019, Mr Caine's three applications to the Court of Appeal for permission to appeal against the three ECROs were refused on the papers by Males LJ. Each was certified as totally without merit. Males LJ commented in his written reasons that Mr Caine showed every intention of continuing to make unmeritorious applications and that an ECRO was "entirely appropriate in such circumstances".

18. As for costs, I am informed in the witness statement of Mr Rory Hishon, for Facebook, that during the course of claims 1-4, Mr Caine was ordered to pay over £60,000 on account of costs and that none of those costs have been paid, despite some attempts by the defendants in those claims to enforce them.

The Proceedings Against Facebook

19. Facebook is the defendant in a fifth claim (**the Facebook proceedings**), brought in the County Court Money Claims Centre on 25 June 2020 and proceeding up to now in the Bournemouth and Poole County Court. The Facebook proceedings were brought during the currency of the three ECROs, which were in effect on 25 June 2020 and still are. The Facebook proceedings were launched following Facebook's decision to block access to a Facebook page sponsored by Mr Caine.

20. The background to that matter concerned an acrimonious dispute, the details of which I need not go into here. In briefest outline, Mr Caine knew the late father of Mr Curry and Ms Woodford, who had responsibility for his care in his old age. Mr Caine alleged that the posts Facebook had blocked included allegations that Mr Curry and Ms Woodford had abused a lasting power of attorney they held over their father's affairs in a corrupt way for their own financial gain; and that were guilty of fraud, abuse and breach of fiduciary duty.

21. The language used was extreme, borrowing from the era of Nazi rule in Germany in the last century. Facebook's decision to block the page followed assurances from the Office of the Public Guardian that the allegations were baseless.

22. On 2 July 2021 Deputy District Judge Ashby, in the County Court at Bournemouth and Poole, declared that the Facebook proceedings had been issued in breach of the ECROs and were, therefore, automatically struck out, together with various applications made within those proceedings, also in breach of the ECROs. In his order, he recorded that his finding that two of those applications were also, in their own right, "totally without merit".

23. He criticised an argument from Mr Caine in submissions that Facebook ought to have proceeded by way of committal proceedings. He said that argument was "totally without merit", but that observation related to an argument made in court rather than to a claim or application within a claim. He commented in his judgment that the time may now have come for the court to consider whether a GCRO might be appropriate, but that would have to be done in this court since, as a Deputy District Judge, he had no power to make such an order.

Other Background Matters

24. The copious exhibits to Mr Hishon's witness statement in support of a GCRO set out numerous other matters to which I refer in brief. They comprise a litany of findings going back to about 2010, in actions against numerous persons and bodies. The findings made are to the effect that his frequent litigious forays and threats of litigation, not always followed by the bringing of an actual claim, have been abusive, misconceived and without merit. They amount to quite an impressive record for a serial litigant in person.

Legal Principles

25. Practice Direction 3C, paragraph 5.1, provides for the making of civil restraint orders. As is well known, there are three types of civil restraint orders of which a GCRO is the most potent, for it restrains the subject from issuing any claim or making any application in the courts where it applies, without first obtaining permission. It is not limited to restraining claims or applications connected with the subject matter of previous proceedings.

26. A GCRO may be made where, to quote paragraph 4.1 of the Practice Direction:

> "The party against whom the order is made persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate."

27. Those provisions have been discussed in many cases. I was referred by Ms Hamer, for Facebook, to a plethora of authority. I can, however, confine my citation of authority more narrowly. I adopt as my guiding star the judgment of Males LJ in *Sartipy v Tigris Industries Inc* [2019] EWCA Civ 225 at paragraphs

[25]-[37]; see also the extracts from those paragraphs cited by Mr Spearman QC in his judgment of 2019 at [80]. I will not set out the words.

The Parties' Submissions

28. Ms Hamer made detailed written submissions referring to and reiterating what Mr Hishon said in his witness statement, supported by the numerous documents exhibited to it. Her arguments boiled down to the proposition that a GCRO or alternatively at least extensions to the three ECROs, are required to protect the parties and the public against multiple abuses of the court's process by the bringing of vexatious and unmeritorious claims, not to mention unrequited financial detriment in the form of unpaid costs orders; coupled with the likelihood that this will continue if not checked.

29. She also pointed out that the occasional success Mr Caine has had along the way is no answer to the need for an order in a case such as this. Metaphorical expressions from the case law such as references to a "batting average" or to the hope of an argument "sticking like spaghetti" and, with less originality, a "scattergun" approach to litigation, provide the answer to such a contention which, indeed, is made by Mr Caine in his witness statement and documents produced to me today.

30. Mr Caine's submissions in writing, in the documents he relies on, were to the contrary effect. He submitted that the order would be unjust and that his overall record did not show him to be a vexatious litigant. He protested that his litigation is brought in good faith and he does not always lose. He has had occasional wins and not all of his losses have led to a certification that his course of proceeding was totally without merit.

31. He offered an undertaking to seek or await permission before engaging in further proceedings and has even written an informal letter to a fellow judge of this division recently seeking such permission. He also says in his witness statement that if the court is against him, he seeks relief from sanctions. That was a suggestion made in an email three days ago of 3 August 2021.

32. However there is, rightly, no application before me for relief from sanctions. If there were, the making of the application would very likely breach at least one of the ECROs. Deputy District Judge Ashby was not willing to grant relief from sanctions: see paragraph 2 of his order.

33. Further, Mr Caine suggested that if the court were against him today, he would seek permission to appeal. I take that indication as a contingent application for permission to appeal should the court make a GCRO or continue the ECROs and I will, in due course, consider that application.

34. Mr Caine submitted in writing to me today, and on previous occasions has submitted in writing and orally to other judges, in full detail, why he says applications such as those made today are not well founded. However, he does not and cannot dispute that although he says he has not engaged in repetitive

and vexatious litigation, his attempt to appeal the three ECROs granted by Mr Spearman QC was itself found by Males LJ to be totally without merit.

Reasoning and Conclusions

35. I prefer the submissions of Ms Hamer, supported by Mr Curry. I think the evidence is overwhelming in favour of a GCRO. I am satisfied that the tests in the Practice Direction are amply met. I could not think of a plainer case for a GCRO and I do not think Mr Caine's submissions to the contrary have any real force, nor that the undertaking offered by him should be accepted.

36. As Stacey J noted, in *London Underground Limited v Mighton* [2020] EWHC 3099 (QB) at [41]-[46]:

> "41. The three questions to be addressed when considering a GCRO, set out in *Nowak v NMC* [2013] EWHC 1932 are:
>
> i) Has the litigant persistently issued claims or made applications which are totally without merit ... ?
>
> ii) Does an objective assessment of the risk which the litigant poses demonstrate that they would, if unrestrained, issue further claims or make further applications which would abuse the Court's process... ?
>
> iii) What order, if any, is just and proportionate to make to address the risk identified ... ?
>
> 42. In an application for a GCRO a third threshold requirement in addition to persistence and claims or applications being totally without merit is the inadequacy of an ECRO. Persistence means more than habitual ... ."

37. I would add that the requirement of persistence has been held to be satisfied by the making of three or more totally without merit claims or applications, but these need not have been made at any particular time, such as more recently than a relevant ECRO.

38. In this case, I will focus next on orders made in proceedings after the three ECROs. The first such order was a rare win for Mr Caine in judicial review proceedings against the Independent Office of Police Conduct and the Chief Constable of Hampshire Constabulary.

39. However, on 29 October 2019, as I have mentioned, claim 4 was struck out by Master Davison with summary judgment entered and declared "totally without merit".

40. Then, on 5 December 2019, as I have mentioned, Males LJ refused Mr Caine's applications for permission to appeal against the three ECROs, declaring those applications "totally without merit".

41. On 19 October 2020, Mr Caine was less successful in a judicial review permission application against the Police and Crime Commissioner for

Hampshire and the Chief Constable of Hampshire Constabulary. His application for permission was declared "totally without merit" by His Honour Judge Lambert.

42. Then on 2 July 2021, as already mentioned, the Facebook proceedings were declared by Deputy District Judge Ashby in the Bournemouth and Poole County Court to have been brought in breach of the three ECROs and as such automatically struck out.

43. The "totally without merit" findings to date, before and during the currency of the ECROs, stand as a record of multiple applications that were just that - totally without merit. There is no need, and it is not appropriate, for the court to re-examine whether those findings were correctly made: see Mr Spearman's judgment at [45]-[46], citing that of Leggatt J (as he then was) in *Nowak v NMC* at [67].

44. Furthermore, I think Deputy District Judge Ashby was right to say that the time had come to consider a GCRO. I remind myself that in the *Nowak* case, Leggatt J said at [70]:

> " ... because a civil restraint order represents a restriction on the right of access to the courts, any such order should be no wider than is necessary and proportionate to the aim of protecting the court's process from abuse. In accordance with this principle, the court should therefore approach this question by asking 'what is the least restrictive form of order shown to be required'."

45. In all the circumstances, I am persuaded to make a GCRO now of the maximum duration the law allows, of two years. Two years is a short time in litigation. I am confident from the history that the requirement of persistence it met and that the ECROs have proved insufficient. That is shown in particular by the issue of claim 4 attempting to pre-empt and subvert the ECROs in advance of them being made; and by the bringing of the Facebook proceedings, issued in breach of the current ECROs.

46. I am further satisfied that nothing less than a two year GCRO will stop Mr Caine from persisting in issuing totally without merit claims or applications during that period.

47. For all those reasons, I will transfer the Facebook proceedings to the High Court. I will make a two year GCRO against Mr Caine in those proceedings. I will treat his documents and email as incorporating an application for permission to appeal.

48. I refuse that application and I will include that refusal in my order on the ground that an appeal would have no real prospect of success, for the reasons given in this judgment. I will hear the parties in a moment on the form of the order and whether any further relief is appropriate or necessary, although Mr Caine will not be in a position to contribute to that discussion as he has chosen not to attend today's remote hearing.

Two postscripts

49. As a first postscript, I add the following thoughts which, I stress, are not intended as any criticism of Facebook, its legal representatives or any of the

other parties before the court. They may be of wider application than just applications for civil restraint orders.

50. In presenting these applications to the court, the parties spared no detail of the history and background. I can understand why they may have felt under pressure to take that approach. In this judgment, by contrast, I have omitted a vast amount of detail and stuck to the essentials.

51. In applications of this kind, it will nearly always be sufficient and proportionate to describe in a witness statement the past history of litigious activity by the target of the application, without putting into a bundle (in this case of over 1,500 pages) so many of the contemporary documents evidencing that history.

52. It should be enough to say in the witness statement that the documents exist and have all been seen by the maker of the statement, but that it is not considered necessary or proportionate to exhibit them all. In the present case, the contents of the reading list helpfully provided at the start of Ms Hamer's written argument, running to perhaps a couple of hundred pages, would probably have sufficed as the bundle of documents, with a few additions.

53. In case a party should worry that the judge will prefer a more document-heavy approach to mine, which is at the document-light end of the spectrum, the more peripheral documents can be collated but not put in the bundle and referred to in the witness statement as falling into the category "available if needed but production regarded as disproportionate unless the judge says otherwise".

54. As my second postscript, I mention for Mr Caine's benefit that a GCRO is general in its application and applies to any proceedings in the relevant courts during its currency. There is none of the scope for ambiguity that might be exploited in the case of an ECRO, about whether fresh proceedings fall within the scope of an ECRO, as debated before Deputy District Judge Ashby.

55. That means that any breach of the order is much more likely to be found deliberate, rather than an error of interpretation of a civil restraint order made in good faith. That, in turn, means that the contempt jurisdiction of the court is the more likely to be invoked, either by persons such as the claimants in these applications or, if they have had enough (which would be understandable) by the court itself, which has a duty under rule 81.6(1) of the Civil Procedure Rules, if the court considers that a contempt may have been committed, to consider whether to proceed against the relevant person in contempt proceedings.
