



Neutral Citation Number: [2022] EWHC 1592 (QB)

Case No: QB-2022-001671

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21/06/2022

**Before :**

**THE HONOURABLE MRS JUSTICE COLLINS RICE**

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**Between :**

**GJE**  
**FJV**

**Claimants**

**- and -**

**SLE**

**Defendant**

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**Mr Tom Blackburn** (instructed by Cohen Davis Solicitors) for the Claimant  
**The Defendant** did not appear and was not represented

Hearing date: 16<sup>th</sup> June 2022  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 12 noon 21 June 2022.

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**THE HONOURABLE MRS JUSTICE COLLINS RICE**

## **Mrs Justice Collins Rice:**

### **Introduction**

1. This is the return date ordered by Murray J on 26<sup>th</sup> May 2022, following the grant of the Claimants' application for an injunction restraining the Defendant from attempting to contact them and their families, and from disclosing certain information about them. The judge also directed a number of privacy measures on that occasion, including the anonymisation of the parties to these proceedings and the imposition of restrictions on access to court documents in the case.
2. On the same date, the Claimants issued a claim against the Defendant, seeking damages and permanent injunctive relief to prevent the misuse of their private information and harassment within the terms of sections 1 and 3 of the Protection from Harassment Act 1997. The claim is made with reference to a course of conduct said to have been carried out by the Defendant between January and May 2022, including threats to communicate or publish private or confidential information.
3. The Claimants now seek continuing injunctive and privacy measures pending determination of this claim.

### **Outline Factual Background to the Claim**

4. The parties are all private individuals with no public profile in the UK.
5. The Claimants live, and work for the same company, in the USA. The Second Claimant is the First Claimant's boss. He is married, and she is in a long-term relationship. They had a brief sexual affair in 2017, terminated by mutual consent because the Second Claimant did not want to jeopardise his marriage.
6. The Defendant lives in the UK. The First Claimant and the Defendant had known each other since childhood, but were not close. They became so in 2020 when the Defendant temporarily relocated to the US to deal with a family medical crisis. They were on friendly and supportive terms for more than a year while the Defendant's relative was in hospital, and for four weeks after his discharge when he and the Defendant lived in the First Claimant's home before returning to the UK.
7. The relationship between the First Claimant and the Defendant soured in the second half of 2021 over the issue of the disposal of the personal effects the Defendant had left behind at the First Claimant's home.
8. The Claimants have filed witness statements setting out a subsequent course of conduct by Defendant towards them. From this it appears that while the Defendant was staying with the First Claimant, she accessed, and took screenshots from, the First Claimant's phone. By these means, the Defendant found out about the Claimants' affair. The screenshots included a photo the First Claimant had sent the Second Claimant of herself in a bikini with the message 'I love you'.
9. The course of conduct alleged comprises persistent online contact by the Defendant to the Claimants, of a nature amounting to angry, abusive and threatening demands for

money by way of ‘compensation’ in relation to her personal effects, and, should she not be satisfied with the response to these demands, threats to disclose the affair, including to the Second Claimant’s wife. In short, it is the Claimants’ case that they are being blackmailed, and that their private, family and working lives are being subjected to unwarranted threat.

10. They bring these proceedings to restrain the Defendant’s behaviour and assert their right, protected by the ECHR, to autonomous control of their private information.

### **Proceeding in the absence of the Defendant**

11. At the return date hearing before me on 16<sup>th</sup> June 2021, the Defendant did not appear and was not represented. The Claimants reminded me of my discretion (Civil Procedure Rule 23.11) to proceed to determine their applications in the Defendant’s absence.
12. In considering the exercise of that discretion, I had to bear in mind that the application before me was one for relief which, if granted, might affect the exercise of the Convention right to freedom of expression. As such, section 12(2) of the Human Rights Act 1998 makes specific provision for cases in which the person against whom relief is sought is neither present nor represented. In such cases, the relief is not to be granted unless the court is satisfied that the applicant has taken all practicable steps to notify the respondent (or that there are compelling reasons why the respondent should not be notified).
13. I have also directed myself to *Bourne v Nejad* [2019] EWHC 1366 (Ch) and to *Pirtek (UK) Limited v Robert Jackson* [2017] EWHC 2834 (QB). Warby J noted in the latter case that the exercise of discretion to proceed in the absence of a defendant must of course be exercised compatibly with the overriding principle of justice, and in cases to which s.12(2) applies a two-stage approach is indicated. First: consider whether a defendant has received proper notice of the hearing and the matters to be considered at the hearing; second: if so, consider whether the available evidence as to the reasons for her non-appearance supply a reason for adjourning the hearing.
14. Where a court does make an order at a hearing in the absence of a defendant, CPR 23.11(2) provides that a court may subsequently relist the application, of its own motion or on an application. Warby J in *Pirtek*, having exercised his discretion to proceed in the absence of an unrepresented respondent, decided to hand down written judgment and direct the claimant to serve a copy on the respondent along with the resulting order, so that the respondent would know the reasons for it without delay and be able, if he had any basis or reason for doing so, to avail himself of this additional safeguard.
15. I am satisfied, and I do not understand the Defendant to dispute, that she has been properly served with all the relevant documentation in these proceedings as was fully aware of today’s hearing and the applications before me. It appears she had indicated very recently her intention to attend. In all of these circumstances I accept that the Claimants have done all that is necessary and practicable, and that the Defendant has been kept fully informed.
16. The Defendant has not asked for an adjournment or provided evidence explaining her failure to attend. I understand her to have supplied the Claimants with a last-minute

and informal explanation referencing her caring responsibilities, but I was unable to conclude that I had been provided with enough information to be satisfied that an adjournment of the proceedings would serve to secure the Defendant's attendance on a future occasion. I also took into account such information as was provided to me suggesting that the Defendant was not seeking actively to defend this application, at least in so far as it relates to the injunctive relief sought, nor indeed the underlying claim, at any rate as regards liability; but neither had she fully complied with the Order of Murray J or committed to providing the undertakings necessary to reassure the Claimants and settle this litigation.

17. In all of these circumstances, I considered it just and convenient to proceed in her absence. It appeared to me to be in all the parties' best interests, including as to conserving costs, for legal clarity to be provided at least on an interim basis. I indicated at the hearing that, for the same reasons as were given by Warby J in *Pirtek*, I would hand down a written judgment and direct the Claimants to serve a copy of it, together with the resulting Order, on the Defendant. If there were relevant matters not before me, and a reason why they were not before me, the Defendant will thereby be in an informed position to consider taking urgent legal advice.

### **Privacy Measures**

18. The parties in this case had been anonymised at an earlier stage in the proceedings, and restrictions on access to court documents imposed, so as to prohibit the identification of the Claimants.
19. I am satisfied that the continuing anonymisation of the parties is necessary in this case. I also agree with the Claimants' application to continue restrictions on access to court papers. The Claimants' claim relating to the misuse of private information would be wholly undermined before it could be properly determined, if their names were associated with these proceedings.
20. I have not, however, considered it necessary to conduct the return date hearing in private, nor to impose any general restrictions on the reporting of the hearing. That has been on the basis that the Claimants' evidence, setting out the information they seek to protect, and which I read in advance of the hearing, was referred to in its written form only and not rehearsed orally in court, and that access to that part of the court record will also be suitably restricted. Those are in my view necessary measures to continue to preserve the privacy of that information pending determination of the claim, and thereby to keep the claim alive.
21. This judgment is drafted on a similar basis.

### **Injunction**

22. This is an application for interim relief which, if granted, might affect the Convention right to freedom of expression: both by restraining the Defendant and by generally prohibiting the identification of the parties. By section 12(3) of the Human Rights Act, such relief may not be granted unless the court is satisfied that a claimant is likely to establish at trial that publication should not be allowed.

23. To succeed at trial on the claim of misuse of private information, the Claimants must establish that their Article 8 ECHR right to privacy is engaged, and that the effects on them of breaching that right are disproportionately serious to any countervailing right that may be asserted to do so. On the evidence before me, I am satisfied that the Claimants are likely to establish that their asserted entitlement to autonomous control of information about their sexual life is squarely within the established scope of Art.8, and that they had a reasonable expectation of privacy as regards their sexual affair; that they are likely to be able to prove that disclosure would have a serious impact on their personal wellbeing, a destructive effect on their family lives, and jeopardise their employment situation; and that, in any event, they are entitled not to be subjected to threats of disclosure – whether direct or indirect – which are designed to bring about the payment of significant amounts of money to avert them. The Defendant has no discernible countervailing right to do so.
24. To succeed at trial on the claim of harassment, the Claimants must establish that the Defendant has pursued a course of conduct towards them (comprising at least two occasions) which amounts to harassment (including causing alarm or distress) and which she knows or ought to know amounts to harassment of them. On the evidence before me, I am satisfied that the Claimants are likely to establish that the communications they have received from the Defendant, and the tone and content of those communications, amount to a course of conduct which she ought to have known, and did know and intend, would cause him alarm and distress; that they were indeed alarmed and distressed; that the course of conduct was persisted in despite the Claimants’ clearly expressed attempts to cause her to desist; that this behaviour of the Defendant’s was not reasonable or otherwise defensible; and that, bearing in mind the blackmail dimension, it was harassment of a sufficiently serious nature as be equivalent to (or to constitute) criminal conduct.
25. I was, however, very properly reminded of the judgment of Sir David Eady in *Shakil-ur-Rahman v Ary Network* [2017] EMLR 10 to the effect the tort of harassment is not complete unless a claimant has experienced harassment within the UK jurisdiction. The Claimants have throughout the course of conduct to date been in the USA. The First Claimant states in her evidence her intention to visit the UK ‘in June or July 2022’ and her fear of being harassed here by the Defendant. *Shakil-ur-Rahman*, however, must raise a real doubt about whether the Claimants, particularly the Second Claimant, would in these circumstances be ‘likely to succeed’ on their harassment claim as matters currently stand. Since, however, I am satisfied that they would be ‘likely to succeed’ on their misuse of private information claim, these are doubts I do not need resolve for present purposes.
26. It is obvious that damages for interim breach of the rights the Claimants assert would not be an adequate remedy. Disclosure once made would be irreversible and destructive of their ability to seek to make out their claim.
27. I am satisfied on the evidence before me that, unless restrained by order, there is a present risk that the Defendant will disclose the information and/or persist in threatening to do so. That is indeed precisely the course of conduct complained of. The Defendant appears to have ignored all representations to desist until she was served with the Order made on 26<sup>th</sup> May (upon which she has apparently desisted) and has given no formal undertakings to do so when so requested. I am satisfied in all these

circumstances that the Defendant's behaviour should continue to be restrained by order until final determination of the claim.

28. I have only the Claimants' evidence before me at this interim stage. The Defendant has not (yet) put forward contrary evidence. These assessments are necessary provisional. Nevertheless, the Claimants' evidence at this stage is sufficient to satisfy me that the legal tests for granting the Claimants the interim remedies they seeks have been met.

### **Form of Order**

29. The form of Order proposed by the Claimants, and which I am making today, includes a penal notice, which makes failure to comply with it a potential basis for committal for contempt of court, including potential liability to imprisonment, fines and seizure of assets. This is not a formality. It means that, unless the terms of the order are strictly complied with by the Defendant, and if she persists or causes others to persist in the conduct complained of, the Defendant can be arrested and be made subject to quasi-criminal proceedings and punishment.
30. The Order contains certain exceptions protecting the Defendant's legal position and her ability to seek legal advice and support in resisting the Claimants' claim should she be minded to do so. It also entitles her to apply to court for variation of the terms of the Order if there are reasons, which may not be apparent to me today and which I may not have been able to take into account, why the Order should be expressed differently or discharged altogether.