Neutral Citation Number: [2022] EWHC 414 (QB)

Case No: QB-2021-003447

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/02/2022

Before:

HIS HONOUR JUDGE LEWIS
(sitting as a Judge of the High Court)

- -

Between:

Zobia Rafique **Century One Estates Limited**	**Claimants**
- and -	
The Association of Community Organisations for Reform Now Limited **Aya Ismael Hoez**	**Defendants**

- -

Richard Munden (instructed by **JMW Solicitors LLP**) for the Claimants
The **second defendant** did not attend.

Hearing date: 21 February 2022

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.

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HIS HONOUR JUDGE LEWIS

This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 28 February 2022

His Honour Judge Lewis:

1. The second claimant is a property management company which rents properties to private tenants. The first claimant is a director of that company.

2. The first defendant, known as "Acorn", describes itself as a "mass membership organisation of low-income people organising for a fairer deal for our communities". The second defendant is a member of Acorn.

3. On 10 December 2020, the second claimant entered into a tenancy agreement with the second defendant and paid a deposit. The next day, the second defendant asked for her deposit to be returned, but the claimants refused her request.

4. According to the Particulars of Claim, the defendants then pursued a campaign against the claimants until early April 2021. The campaign was focussed on the second defendant, her complaints about the claimants and their refusal to return her deposit.

5. On 10 September 2021, the claimants brought proceedings for libel, slander, harassment and breach of data protection law, seeking damages and an injunction.

6. The proceedings against the first defendant have been resolved following the acceptance of an offer of amends (in respect of the defamation claims) and a separate settlement offer (in respect of the other causes of action). The terms of settlement included payment of costs and damages, a contractual undertaking and the publication of an apology and correction (in respect of the defamation claim) in the following terms:

   "Apology and Correction.

   We provide this Apology and Correction in order to apologise to Zobia Rafique and Century One Estates Ltd in relation to very serious, defamatory and false allegations that we made about them in publications dated 20 December 2020, 20 February 2021, 22 February 2021 and 1 April 2021.

   We published allegations stating that Mrs Zobia Rafique operates a fraudulent business and defrauded Ms Aya Hoez, a student tenant, by making her sign a blank tenancy agreement, creating a "bogus" agreement, and then adding additional unexpected fees. We stated that Ms Rafique was guilty of stealing £300 from her tenant. Further, we stated that Mrs Rafique and Century One Estates Ltd "tricked" and "pressured" a student tenant into paying a deposit for a substandard property, made her feel unsafe, and refused to return her deposit with the consequence that the tenant then faced homelessness.

   It is without reservation that we accept responsibility for these false and defamatory allegations. We recognise that there was no good foundation to these allegations, and we regret that they were ever made. We therefore wish to correct the position and to express our regret to Mrs Zobia Rafique and Century One Estates Ltd for the

serious distress and reputational harm caused to them by these false allegations which we retract in their entirety.

We have agreed to pay libel damages and costs to Mrs Rafique and Century One Estates Limited."

7. The following claims are still pursued against the second defendant:

    a. a claim by the first claimant for harassment; and
    b. claims by both claimants for defamation in respect of a speech given by the second defendant on 20 February 2021 to protesters outside Sheffield Town Hall ("the Speech").

8. The claim against the second defendant in respect of the Speech is brought in two ways. Firstly, the claimants have sued the second defendant for slander in respect of her spoken words at the rally. Secondly, the claimants seek judgment against the second defendant for libel arising out of the first defendant's online publication of a film of the Speech. The claimants' pleaded case is that the words were spoken by the second defendant knowing and intending that they be recorded and published, making her liable for the subsequent social media publication.

9. On 22 October 2021, the claimants issued an application in accordance with Part 23 seeking default judgment against the second defendant and directions on remedies.

10. On 15 February 2021, the claimants issued a further application seeking an injunction against the second defendant.

11. The claimants no longer seek damages against the second defendant. At this hearing they pursue their two applications, namely for default judgment and an injunction.

Proceeding in the absence of the second defendant

12. The first issue I must consider is whether it is fair to proceed with the applications in the absence of the second defendant.

13. The approach to be taken by the court in these types of cases was summarised by Warby J (as he then was) in ***Pirtek (UK) Limited v Robert Jackson*** **[2017] EWHC 2834 (QB)** at [19] and [20]:

> "19. [proceeding in the absence of a defendant] is permissible in principle, but the court has a discretion: CPR 23.11. The Court must exercise its power to proceed in the absence of a party in a way that is compatible with the overriding objective. I had to consider this issue in somewhat similar circumstances two years ago, in *Sloutsker v Romanova* [2015] EWHC 545 (QB) [2015] EMLR 27 (July 2015) and again in *Brett Wilson LLP v Persons Unknown* [2015] EWHC 2628 (QB) [2016] EMLR 2 [14]-[16] (September 2015). Both were applications

> for default judgment where the defendant was a litigant in person who had failed to appear without giving a reason, and the relief sought fell within the scope of s.12(2) of the Human Rights Act 1998.
>
> 20. I took a two-stage approach, considering (1) whether the defendant had received proper notice of the hearing and the matters to be considered at the hearing; (2) if so, whether the available evidence as to the reasons for the litigant's non-appearance supplied a reason for adjourning the hearing. I considered it necessary to bear in mind that the effect of s.12(2) is to prohibit the Court from granting relief that 'if granted, might affect the exercise of the Convention right to freedom of expression' unless the respondent is present or represented or the Court is satisfied that '(a) the applicant has taken all reasonable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified.' I adopt the same approach in this case."

14. In June 2021, the claimants' solicitors retained a process server to deliver the letter of claim to the second defendant. This was delivered personally after the process server spoke with the second defendant by telephone and arranged an appointment.

15. The claimants went on to serve proceedings on the second defendant at the same address. I am satisfied on that the Claim Form and Particulars of Claim were served by first class post in accordance with the rules and that the deemed date for service is 16 September 2021.

16. I am further satisfied on the evidence before the court that the claimants have since served either by post or delivery: (i) both application notices, (ii) the evidence relied upon in support of the applications; (iii) the claimants' skeleton argument for this hearing; (iv) the hearing bundle; and (v) and the bundle of authorities.

17. As well as making sure that the second defendant has been *served* in accordance with court rules, I must also be satisfied that all reasonable steps have been taken to *notify* the second defendant of the application, and this hearing: s.12(2) Human Rights Act 1998.

18. In addition to sending key documents to the second defendant by post (or delivery), the claimants have also sent them by email to the second defendant's current email address. On Friday of last week, the second defendant acknowledged these proceedings when she contacted the claimants' solicitors by email asking whether she can put in place a payment plan. In addition, given the close relationship between the first and second defendants, it seems inconceivable that there would not have been communication between them in respect of the claim, for example prior to

the first defendant deciding to make its offer of amends, and publishing its fulsome apology.

19. The second defendant has chosen not to file any evidence, or make any applications, or communicate with the court in any way. I am satisfied that she has received proper notice of the hearing and the matters to be considered, and that it is fair to proceed in her absence.

20. I am handing down this judgment in written form. I am doing so for the reasons identified by Warby J in ***Pirtek*** at [24], namely to allow a defendant…

> "… if he thinks it appropriate, to make a timely application to the Court for [the claimant's] application to be re-listed pursuant to CPR 23.11(2), or to set aside the default judgment which I propose to enter. I do not suggest that it would be appropriate to make either application. My point is that in this way [the defendant] will be able to give informed consideration to those options, in full knowledge of the basis on which judgment has been entered against him, and will have no reason to delay any application he may choose to make. All this buttresses my view that it is just and convenient to go ahead now, despite the absence of [the defendant]."

Default judgment

21. CPR rule 12.3(1) provides that a claimant may obtain judgment in default of an acknowledgement of service only if at the date on which judgment is entered (a) the defendant has not filed an acknowledgement of service or a defence to the claim (or any part of the claim); and (b) the relevant time for doing so has expired. Where a claimant seeks non-pecuniary remedies, default judgment just be requested by application in accordance with Part 23.

22. The conditions for obtaining judgment in default of an acknowledgment of service prescribed by CPR 12.3(1) are met: the time for filing an acknowledgement of service or defence has expired, and neither has been filed.

23. On an application for default judgment, CPR rule 12.11(1) provides that claimants are entitled "to such judgment as it appears to the court that the claimant is entitled to on his statement of case".

24. In ***New Century v Makhlay*** **[2013] EWHC 3556 (QB)**, Carr J (as she then was) held at [30] that where default judgment is granted "The Particulars of Claim are, in effect, a proxy for the judgment, setting out the basis of liability."

25. The approach to be taken in defamation cases was considered further by Warby J in ***Sloutsker v Romanova*** **[2015] EWHC 2053 (QB)** at [84]:

> "This rule enables the court to proceed on the basis of the claimant's unchallenged Particulars of Claim. There is no need to adduce evidence or for findings of fact to be made in cases where the defendant has not disputed the claimant's allegations. That in my judgment will normally be the right approach for the court to take. Examination of the merits will usually involve unnecessary expenditure of time and resources and hence [be] contrary to the overriding objective. It also runs the risk of needlessly complicating matters if an application is later made to set aside the default judgment: see *QRS v Beach* [2014] EWHC 4189 (QB), [2015] 1 WLR 2701 esp at [53]-[56]."

26. At [86], Warby J continued: "the general approach outlined above could need modification in an appropriate case, for instance if the court concluded that the claimant's interpretation of the words complained of was wildly extravagant and impossible, or that the words were clearly not defamatory in their tendency."

27. Similarly, in ***Charakida v Jackson*** **[2019] EWHC 858 (QB)**, Warby J noted:

> "Although the Court addressing an application for default judgment will normally proceed on the basis that the facts are as alleged in the Particulars of Claim, questions as to what defamatory meaning(s) are borne by a publication, and whether they have caused or are likely to cause serious harm to reputation, are special kinds of factual issue which ought not to be determined against a defendant without at least some consideration of the merits. It would be wrong to grant a default judgment if the meanings complained of were wholly extravagant and unreal interpretations of the offending words or could not reasonably be considered defamatory: see *Brett Wilson* at [18-19]."

28. An equivalent approach needs to be taken in respect of the harassment claim. Examples of situations where the general approach might need modification include where there is no obvious course of conduct, or where it would be unreal to characterise the events relied upon as unreasonable and oppressive conduct, likely to cause the recipient alarm, fear and distress.

<u>The pleaded claim on harassment</u>

29. The Particulars of Claim set out a list of more than twenty-five incidents relied upon to support the claim that the defendants pursued a course of conduct which they knew or ought to have known amounted to harassment of the first claimant, contrary to s.1(1) of the Protection from Harassment Act 1997. The first claimant says that the course of conduct was targeted at her, likely and intended to cause her alarm or distress, and in the circumstances was oppressive and unacceptable. The pleaded incidents took place between 13 December 2020 and early April 2021.

30. The claimants' skeleton argument for this hearing summarises neatly some of the incidents set out in the Particulars of Claim, which included: "repeatedly visiting the First Claimant's home address and on the first occasion loudly singing about her outside (PoC §9-10 and 24); making offensive and abusive statements towards her in a supermarket (PoC §16); sending her threatening letters and other unwelcome

messages (PoC §11, 18, 26, 34, 36 and 40) and repeatedly telephoning and text messaging her both personally and via her business (pretending to be potential clients in order to cause the business loss) (PoC §21 and 35); delivering defamatory messages about her to her neighbours (PoC §23); making a speech accusing the Claimants of fraud outside the town hall (PoC §30); displaying banners about the Claimants outside properties rented by the Second Claimant around Sheffield (PoC §32); and posting videos of many of these activities, including of the First Claimant's home and car registration plates, and repeated messages about her on their publicly accessible Facebook page and on Twitter (PoC §13-15, 17, 19, 20, 22, 31, 33, and 37-39)."

31. The specific incidents pleaded that involve the second defendant are:

    a. On 13 December 2020, the second defendant attended a meeting of 40 or so members of the first defendant held outside the Robin Hood public house:

        i. She made a statement to those present via loud hailer, inciting action against the first claimant, including that "if she [the first claimant] doesn't listen we will carry on and again we are power in numbers. So, there's only one of her, maybe two with her husband, but there's all of us".

        ii. She recorded at least two statements to camera, during which she claimed the first claimant had "stolen £300" from her and was "demanding more".

    b. After the meeting on 13 December 2020, the second defendant marched with around 40 members of the first defendant, to the first claimant's home address. There was then a protest, with the crowd only leaving after the first claimant called the police.

        i. Members of the crowd confronted the first claimant at the door of her home. They ignored the first claimant's request that they stop filming. The first claimant invited the second defendant into her home to discuss the matter in a civilised manner, but the second defendant refused.

        ii. A member of the first defendant handed the first claimant a letter. This stated that the first defendant "represent" the second defendant. It demanded the return of the deposit and a written statement that the tenancy was void "prior to further action", which the first claimant says was a reference to the continuation of the protests at her home.

    c. On 18 December 2020, the first claimant states she was bombarded with telephone calls and texts from members of the first defendant, demanding payment of the £300. The first claimant infers that the second defendant

supplied it to other members of the first defendant for the purpose of harassing her in this way.

d. On 20 February 2021, the second defendant attended a further public meeting, this time outside of Sheffield Town Hall. She addressed the crowd by loud hailer, stating that both claimants are frauds, and every individual needs to know this.

32. In respect of the other pleaded instances of harassment, the first claimant acknowledges in her Particulars of Claim that she does not know the extent to which the second defendant carried them out. Nevertheless, the first claimant's pleaded case is that all of the acts were carried out on the second defendant's behalf and at her instigation, and she aided, abetted, counselled or procured each such act. The first claimant says that the second defendant is therefore liable for these other incidents, relying on s.7(3A) of the 1997 Act, which reads:

"A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and (b)to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring."

33. This provision was considered by Warby J in ***Al Hamadani v Al Khafaf*** **[2015] EWHC 38 (QB)** at [48]:

"… s.7(3A) assists a claimant, in a case where one defendant A aids and abets another B, by spelling out that in such a case the conduct, knowledge, and purpose of B and what he ought to have known "shall be taken" to be that of A. Aiding and abetting, counselling and procuring are terms of art in the criminal law but this subsection is not expressed to be limited in its application to criminal cases and I see no reason why it should be read as so limited. On the contrary, it is a provision about interpretation of the whole group of sections that precede it, some of which impose civil and some criminal liability."

34. The second defendant has not disputed the way in which the first claimant's case is put in respect of harassment, including her responsibility for the aiding, abetting and/or procuring of a course of conduct by members of the first defendant. I accept the first claimant's submission that the Particulars of Claim are sufficient to disclose a good cause of action in harassment against the second defendant on the basis upon which it is pleaded.

<u>Defamation claim</u>

35. The acts of publication complained of are set out above. The claimants say that the words meant and were understood to mean that the claimants operate a fraudulent business, and that they defrauded a vulnerable student by making her sign a blank

contract and then added additional unexpected fees. These seem to me to be realistic meanings, and certainly not extravagant or unreal.

36. In respect of the slander claim, the pleaded case is that this is actionable per se as what was said imputes a criminal offence and disparages the claimants in their profession as landlords. The Particulars of Claim set out a factual case that supports this position and I note that a limited company can maintain an action for slander without proof of special damage where the words are calculated to injure its reputation in relation to its trade or business, see ***D&L Caterers v D'Ajou*** **[1945] K.B. 364** (Court of Appeal).

37. I find the Particulars of Claim set out a factual case that justifies the court in entering default judgment in the claimants' favour for both the libel and slander claims. The Particulars of Claim identify the relevant acts of publication, and the claimants. The second respondent's responsibility for such publication is set out sufficiently. I also accept that the claimants' pleaded case on serious harm – both under s.1(1) and s.1(2) - is adequate for an uncontested default judgment application. In that regard, I note that the first claimant has already accepted that the serious harm test has been met by virtue of having made an offer of amends.

38. I will therefore enter judgment for the claimants against the second defendant.

Injunction

39. In respect of the application for an injunction, the claimants rely on the fact that the second defendant has not responded to proceedings, nor shown any remorse, and so they are not satisfied that a judgment in default would provide them with adequate protection.

40. In respect of the claim for harassment, the Particulars of Claim identify some of the harm that the first claimant says she has suffered as a result of the campaign against her, including feeling threatened, intimidated and humiliated. The claimants recognise that the wider campaign of harassment by third parties appears to have stopped, but still seek an injunction to prevent the second defendant herself from continuing to harass the first defendant.

41. In my opinion, the claimants have provided a sufficient basis to justify an injunction in circumstances where no defence has been served to the claim or relief sought. I must have particular regard to the importance of the convention right to freedom of expression and be satisfied that the injunctive relief granted is justified and goes no further than is required in pursuit of a legitimate aim: s.12(4). It seems to me that the legitimate aim is to protect the claimants from false and damaging allegations and protect the first claimant from further harassment.

Costs

42. The claimants seek an order against the second defendant for their costs of the claim, and the two applications.

43. The general rule is that an unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order: CPR 44.2. In deciding what order (if any) to make about costs, the court will have regard to all the circumstances including those set out in CPR 44.2(4) and (5).

44. In this case, the claimants have been successful as against the second defendant and there is no good reason why the second defendant should not pay the claimants' costs in respect of the claim against her. Those costs are to be assessed on the standard basis if not agreed.