Neutral Citation Number**: [2023] EWHC 2530 (KB)**

Case No: **KB-2023-003602**

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL

Date: **6 October 2023**

Before:

His Honour Judge Tindal

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Between:

(1) Mr David Punt	**Claimant**
(2) RSM UK Management Limited	
- and -	
Mr Bonaventura Nino Ruocco	**Defendant**

- -

Rory Brown (instructed by **RSM UK Management Limited**) for the **Claimant**

Hearing dates: **6th October 2023**

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RULING

His Honour Judge Tindal **Friday, 6 October 2023**
(**12:32**pm)

Ruling by **HIS HONOUR JUDGE TINDAL**

1. This is an application brought by the two claimants, Mr David Punt and RSM UK Management Limited ('RSM'), for the continuation of an injunction made by Mr Justice Lavender on 22 September 2023. The injunction was made and is sought to be continued pending a trial of the claim of harassment under the Protection from Harassment Act 1997 ('the Act') against Mr Ruocco.

2. In the light of what I shall go on to describe about what is said about Mr Ruocco's behaviour towards the applicants, it is right to record that before me Mr Ruocco, representing himself before me, has been calm, respectful and tried his best to explain what is clearly a complicated situation.

3. Whilst I am paying tribute to Mr Ruocco's conduct towards myself, I also acknowledge that Mr Brown, who represents the applicants, has acted in the best traditions of the Bar in recognising Mr Ruocco as a litigant in person and being as fair but yet as firm on behalf of his clients as he can be.

4. The detail of his dispute, even after almost an hour and a half's hearing, is still not entirely clear, but there are certain clear dimensions to it. Whilst he disputes it, Mr Ruocco is recorded as being made the subject of a Bankruptcy Order on 4 June 1996, nearly 30 years ago. Because that bankruptcy was before 2000, the law as it then was meant that pension rights of a bankrupt vested in the Trustee-in-Bankruptcy who could claim them once in payment even if the bankruptcy had longfinished. That position changed for bankruptcies which began in mid-2000 onwards – ironically the same month Mr Ruocco's bankruptcy finished.

5. The new law, which many would consider to be more fair and humane, is that the pension rights do not vest in the trustee, but they can apply for an order, depending upon the individual circumstances, so as to effectively attach to that pension something called an "income payment order", which acts rather like an attachment of earnings order, so that money from the pension can be diverted to pay the outstanding creditors. However, under the modern law, the court is in a position to decide whether that is an appropriate order and, in particular, whether that would leave the either current or discharged bankrupt, such as Mr Ruocco, as having too little money to live on.

6. In short, if Mr Ruocco's bankruptcy had started after 29 June 2000 as opposed to finishing then, we probably would not be here. However, we are because his pension is governed by the old law and when it came into payment on his pensionable age in 2021, the trustee in bankruptcy claimed it. By then, it was the Official Receiver, following the release of the actual Trustee appointed in 1996, a gentleman called Duncan Beat, about who I will explain a little bit more in a moment.

7. Therefore, Mr Ruocco has been left in the following situation: he tells me that over the last few years he has been struggling with his health. From what he has also told me in passing, he has other domestic challenges, including an autistic son, and he is struggling to get by, as is well known, at a time of cost of living crisis. He is frustrated about the fact that access to his pension is restricted, particularly because he has been told he is ineligible for benefits such as attendance allowance.

8. From a human point of view, one can immediately see why Mr Ruocco thinks the system is unfair and broken because the Official Receiver is effectively taking what he would see as his pension money long after the bankruptcy finished and he is struggling to get by. It was precisely due to unfairness such as this that the law changed in 2000, but it came too late to help Mr Ruocco.

9. Unsurprisingly, Mr Ruocco entered into correspondence with the Official Receiver in 2021 when this issue first arose. I understand from the statement of the First Claimant Mr Punt, whose circumstances I will explain in a moment, that the Official Receiver requested documentation in relation to the Mr Ruocco's bankruptcy from the organisation which last employed Mr Beat. That organisation was the second Claimant RSM UK Management Limited, of which Mr Punt is the Ethics and Independence Partner, although Mr Beat was only there between 2014 and 2019. That request from the Official Receiver to the Second Claimant has prompted its dispute with Mr Ruocco

10. When Mr Beat was originally appointed as Mr Ruocco's Trustee in Bankruptcy in June 1996, Mr Beat worked at an accountancy firm called Morison Stoneham. Mr Ruocco has shown me a list of Mr Beat's various appointments and he refers, for example, to Baker Tilly. My understanding -- and this may be wrong -- is that one particular arm of Baker Tilly, who are a global accountancy firm, may well have been absorbed within the RSM Group, who are the seventh-largest accountancy group in this country. However, one way or the other, there is only what might be described as a pretty tenuous connection between Mr Ruocco's bankruptcy and RSM. The height of it appears to be that RSM happened to employ Mr Beat between 2014, 14 years after the bankruptcy, and 2019, two years before the pension vested. Indeed, from Mr Punt's statement, the only involvement and probably the only documentation that RSM had is a couple of electronic documents which they forwarded to the Official Receiver when requested in 2021, explaining -- and this is extremely important -- explaining that they cannot confirm the accuracy of those documents.

11. Whilst Mr Ruocco has not filed a statement in response to this application and I am reliant on what he told me, what appears to be the trigger for this dispute is that Mr Ruocco is upset that he believes those documents RSM sent to the Official Receiver are indeed inaccurate in various respects, particularly in relation to his liability for VAT to the HMRC and other information as well.

12. Standing back, it seems to my mind strange that Mr Ruocco has been drawn into such a heated dispute – and is now facing allegations of harassment – by an organisation with such a tenuous link to his bankruptcy and which expressly told the Official Receiver the documents may be inaccurate. It seems to me Mr Ruocco would always have been better focussing his correspondence on the Official Receiver, albeit not in the tone he sadly seems to have adopted with the Claimants. Alternatively, as Mr Brown says, there may -- and I emphasise the word "may" -- be a mechanism under the Insolvency Act to re-open some of these matters, but that is not what Mr Ruocco has done.

13. Instead, in the two years since October 2021, Mr Ruocco has decided that two employees of RSM other than Mr Beat, a gentleman called Mr Lyle and a lady called Ms Wragge, were in some way involved in his bankruptcy, or at least in the record-keeping. Mr Punt's evidence is that in fact they were not involved or at least that it was totally peripheral. Mr Ruocco seems to have become determined – even obsessed – in speaking to Mr Lyle and Ms Wragge to challenge the accuracy of the documentation that they have provided to the Official Receiver. That seems, if I may say so to Mr Ruocco, a futile exercise when that information was provided on the basis it may be inaccurate.

14. Nevertheless, Mr Ruocco was unhappy with the responses of Mr Lyle and Ms Wragge and so dragged himself, them and eventually on their behalf Mr Punt and other colleagues at RSM into this dispute. Mr Ruocco appears to have gotten himself into a frame of mind where he is upset with RSM and in particular Mr Punt, who has effectively stepped between Mr Ruocco and Ms Wragge and Mr Lyle and said that Mr Ruocco should not be contacting them any further because they have answered his questions. That is clear from the correspondence which speaks for itself. Whether or not Mr Ruocco agrees that they have answered his questions, both they and Mr Punt take the view that they have and continuing correspondence with Mr Ruocco about this issue – which is increasingly heated on his part – is essentially futile. From what I have seen, I can only agree.

15. It is not really clear to me what Mr Ruocco really wants from RSM any further. Indeed, when I asked him specifically whether he wanted to ask them questions or get documents from them, he said he had already tried that. My impression is that Mr Ruocco is frustrated less with RSM itself and more with the system and how he is being put in this very difficult financial and personal position and he appears to be taking it out, if I can use that expression, on RSM. That is unfair.

16. As a result, there is plain evidence in front of me, although I make clear I am not making any findings of fact, that Mr Ruocco has effectively bombarded RSM with emails and phone calls and indeed, in a very candid observation to me, Mr Ruocco actually recognised that he was seeking to do to RSM what he feels they are doing to him, in other words stress them out, to try and get the situation sorted out. That comes close to an admission that Mr Ruocco has been deliberately bombarding RSM with emails and telephone calls 'to harass them', at least in laymen's terms, although whether it meets the high threshold for harassment is a different issue to which I return. For example, Mr Ruocco did not deny when I put it to him, that despite a warning letter in May 2023, between August and the application in September, Mr Ruocco called RSM over 2,500 times. There have also been many many emails, the tone of some I return to below.

17. The effect of that bombardment, for example, on reception staff at RSM is obvious, and I think Mr Ruocco must agree that those staff are not responsible for the situation and yet they are on the front line of his frustrations with the organisation. That is arguably – even indisputably - unreasonable. For those reasons, it seems to me that Mr Ruocco has got himself into a position where he is unreasonably bombarding RSM with contact (which also includes many emails) in relation to what, in the dim mists of time, may have been a legitimate grievance but has essentially since become something closer to a vendetta, albeit coming from a point of frustration more than anything else.

18. I am cautious with the allegations that Mr Ruocco has issued threats to harm Mr Punt. It may well be, as Mr Punt says himself, that these are in the nature of frustration and that Mr Ruocco is a 'paper tiger' who is unlikely to act on those threats. Mr Ruocco himself told me he struggles to walk about 500 metres and it may well be that he is, in the modern 21st century language, rather a keyboard warrior or indeed perhaps a telephone warrior, rather than anyone who poses any real threat. However, even on that basis, Mr Ruocco's behaviour, by bombarding RSM and in particular the reception staff, is not just a threat but is in fact already a menace. I make no findings of fact to that extent, but the evidence, which is not really denied by Mr Ruocco, demonstrates that point.

19. In those circumstances, there is plainly a triable issue that grounds for harassment are made out on the basis that Mr Ruocco is seriously arguably pursuing a course of conduct against a number of individuals in RSM, in particular Mr Punt, Mr Lyle and Ms Wragge, and that course of conduct amounts to harassment to the criminal standard on the authorities to which Mr Brown refers. In particular, the volume of calls and emails, their aggressive tone, the effect on various indisputably innocent individuals within RSM (since harassment can be a course of conduct against multiple individuals, as made clear by s.1(1A) of the Act) cumulatively amount to arguable 'harassment'.

20. Therefore, there is no real question, applying the usual criteria for an interim injunction that there is a serious issue to be tried in relation to the harassment claim that RSM have now brought against Mr Ruocco and nor would damages be an adequate remedy to stop Mr Ruocco. Indeed, the only thing that has stopped Mr Ruocco is the injunction made by Mr Justice Lavender.

21. There is then the question of the balance of convenience. It seems to me that that is something close to all one way because it is only the injunction which appears to have stopped Mr Ruocco in his

campaign of bombarding RSM with phone calls and yet -- and therefore, were the injunction discharged, it would be very much likely that Mr Ruocco would resume that campaign.

22. The flip side is, if the injunction were granted, it is affording protection to RSM and it, in my judgment, does not really prejudice Mr Ruocco. If he has already asked everything he could possibly ask RSM and has got his answers whether he likes them or not, this injunction will not stop him going back to the Official Receiver and speaking to them about his pension because they may be thought to have much more control over the situation than RSM do. Alternatively, if there really are still questions to ask RSM or documents that can be provided by them, then there is a mechanism under the injunction as it currently exists for that to be done which affords sufficient protection to Mr Ruocco and in turn protects the claimant from bombardment with abuse.

23. While I was initially minded to adjust the injunction to achieve that, in an exchange with Mr Brown, it became apparent to me that the mechanism is already there. I am not persuaded the mechanism is a pre-action disclosure application because it may be the answer to questions rather than documents. I am also not persuaded that it is really sensible for me personally to effectively give Mr Ruocco two or three days to make an application to ask questions or to send a letter so that I can approve it. However, under the current injunction, it is permissible for Mr Ruocco to serve on the applicants, at a particular email address, either various documents related to the case, such as an application to vary or discharge the order, or witness statements, skeleton argument, cost schedule etc or 'any other material upon which he wishes to rely at the return date or in support of any application he might make in these proceedings'. That means that it is permissible -- and I say this for the avoidance of doubt and this will need to be a recital in the injunction order -- that it is permissible under the order for Mr Ruocco to apply (first via RSM) to ask a specific question or ask for specific

documents; in other words, what he would have to do is he would have to send that application to the claimant at the specified email address an application to adjust the injunction order.

24. If the applicants agree that that question or that those documents are a legitimate enquiry, then they will consequently agree that the injunction order needs to be varied to that effect that and can present a Consent Order to the Court. If, however, they take the view that the particular request or letter to amend the injunction order is not a legitimate amendment to the order, then that is an application which Mr Ruocco will have to make to the Court and, rather than seeking to do that today, it is better and fairer for Mr Ruocco to reflect upon what we have said and discussed and to think very carefully about whether he wants to ask further questions or for further documents.

25. But I make it very, very clear to Mr Ruocco, whilst the order allows him to apply to vary the injunction to ask a question, it does not currently allow him to ask the question itself. So the mechanism is that he would have to apply or send to RSM, the email address, an application to amend the injunction order in order to ask those questions. He does not have to do that, but it is a mechanism which is available to him should he choose to do so. That would seem to me to address any real prejudice that there may be to Mr Ruocco and, therefore, in my judgment, the balance of convenience is plainly in favour of the injunction continuing in the current terms.

26. Those 'current terms' include the cross-undertaking for damages. Mr Brown who sought its removal puts the case fairly but firmly on the basis that his clients are concerned of their exposure to damages. However, as he rightly acknowledges, the potential loss to the respondent, in this case Mr Ruocco, from the injunction continuing is not a pre-condition for the normal 'default' imposition of an unlimited cross-undertaking in damages. As was said by Lord Mance in the case of *FSA v Sinaloa* [2013] UKSC 11 at paragraph 29:

"The purpose of the cross-undertaking in favour of the defendant is to cover the possibility of loss in the event that the grant of an injunction proves to have been inappropriate. To refuse to require a cross-undertaking because it appears, however strongly, unlikely ever to be capable of being invoked misses the point…"

27. In other words, as Lewison LJ said in *JSC v Pugachev* [2015] EWCA Civ 139 at paragraph 77, it is not the real risk of loss that justifies the cross-undertaking; it is there effectively to ensure fairness, as the 'price' of an interim injunction before findings of fact have been made. I accept, as shown by *Pugachev*, that in certain circumstances the court can identify and limit the amount of potential exposure to loss under the cross-undertaking - effectively capping it. However, there needs to be some evidence in relation to that.

28. Whilst I have summarised the situation as clearly as I can on the basis of what has or has not been disputed before me today, I say once more I have not made findings of fact. The allegations of harassment have not yet been proved. They may not be proved. That will have to be something that is dealt with at a trial. But for the meantime there should be an injunction in the present terms, but the normal price of that injunction is a cross-undertaking in damages of an unlimited kind. There is no evidence to justify any departure from that usual position by capping the cross-undertaking. To try and limit it would, in my judgment, be potentially unfair and also more or less arbitrary. I think that the claimant can take some comfort from the fact that, as Lord Mance said in the *Sinaloa* case, this may well be one of those cases where the cross-undertaking is unlikely ever to be invoked and so the claimant can be relatively relaxed about the fact that it is a normal cross-undertaking.

29. For those reasons, I grant the application for the continuance of the injunction pending trial in the terms sought. It seems to me the only other matter to deal with is costs.