



Neutral Citation Number: [2024] EWHC 2641 (KB)

Case No: KB-2024-000960

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18/10/2024

Before :

**MRS JUSTICE HILL**

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Between :

(1) TITAN WEALTH HOLDINGS LIMITED  
(2) TITAN SETTLEMENT & CUSTODY  
LIMITED  
(formerly known as GLOBAL PRIME PARTNERS  
LIMITED)  
(3) GRETCHEN ROBERTS  
(4) TIFFANY ROBERTS

**Claimants**

- and -

MARIAN ATINUKE OKUNOLA

**Defendant**

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Robin Lööf and Marcus Field (instructed by Quinn Emanuel Urquhart & Sullivan UK  
LLP) for the Claimant

The Defendant appeared in person

Hearing dates: 9-11 October 2024

Written submissions on costs and permission to appeal: 17 October 2024

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FINAL JUDGMENT

**Approved Judgment**

This judgment was handed down remotely at 2:00pm on 18 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

**Mrs Justice Hill:**

**Introduction**

1. This is a claim for breach of confidence, breach of contract and harassment brought by Titan Wealth Holdings Limited and related Claimants against Marian Okunola, a former employee of theirs.
2. This is my fourth judgment on a procedural matter either before, during or shortly after the trial which took place from 9-11 October 2024. It relates to the Claimants' application made by way of an application notice dated 18 September 2024 for a protective injunction in relation to the Defendant's communications with the Claimants' lawyers.
3. The application was supported by the 5<sup>th</sup> witness statement of Yasseen Gailani, the Claimants' solicitor, dated 18 September 2024 ("Gailani 5"). The Defendant's 5<sup>th</sup> witness statement dated 18 September 2024, paragraphs 14-16 addressed the application as did her emails sent on 18 September 2024 at 5.06 pm and on 18 September 2024 at 12.34 pm.
4. I have considered all the material referred to at [3] above and the written and oral submissions of both parties, made on 9 and 11 October 2024 (at the beginning and end of the trial). At the Claimants' request I have expedited judgment on this application ahead of judgment on the issues in the trial.

**The factual background**

5. The application relates to the Defendant's contact with the Claimants' lawyers since June of this year, which continues. The context for the application is as follows.
6. On 5 April 2024 Freedman J granted the Claimants an interim injunction which was continued by Chamberlain J on 23 May 2024. This sought to (i) restrain the Defendant from harassing the Third and Fourth Claimants who are senior employees of the First Claimant; and (ii) require the Defendant to cease disseminating certain confidential information belonging to the First and Second Claimant and to take certain steps including delivery up in respect of the confidential information in her possession.
7. On 21 June 2024 Chamberlain J found that the Defendant had committed numerous breaches of the injunction and held her in contempt. He imposed a penalty of 6 months' custody, suspended on condition of compliance with the injunction.
8. It is the Claimants' case that the Defendant has continued to breach the injunction. On 9 September 2024 the Claimants applied for an order activating the suspended sentence. One of the grounds for seeking activation of the suspended sentence is that the Defendant has continued to indirectly harass the Third and Fourth Claimants through a series of emails sent to their solicitors, their counsel, counsel's clerks and the court office which are abusive, and often sexually explicit; and which involve the making of unparticularised and unsubstantiated allegations of professional misconduct and in some cases criminal conduct.

9. Gailani 5 detailed the communications from the Defendant. Exhibit YG/7 to Gailani 5 set out examples of them over some 103 pages. Having reviewed both of these, I accept that since June 2024 the Defendant has subjected the Claimants' lawyers to communication which is repetitive, at times pointless, and which includes gratuitously distressing and demeaning content. The correspondence has included threatening and/or sexually abusive content aimed at the Third and Fourth Claimants, their lawyers and others linked with them, such as Mr Gailani's mother. The style of some of the emails (in all bold capitals, large text and with repeated exclamation marks) has added to their threatening nature.
10. On 13 August 2024 Mr Gailani informed that Defendant that (i) he would not be responding to the egregious and highly abusive e-mails she had sent; (ii) the sending of the messages may constitute an offence under the Communications Act 2003, s.127; and (iii) a complaint was going to be made to the police. The following day the Defendant made a police complaint against Mr Gailani alleging that he had lied, perverted the course of justice and engaged in witness intimidation.
11. The communications have been distressing for the Claimants' legal team. It has been necessary for the Claimants' solicitors' firm to divert time and resources to ensuring the protection of their staff. For example, the firm has had to put in place measures preventing the Defendant from emailing any individual solicitor and set up a generic email address for her to use.
12. The Defendant engaged in similar conduct during the trial. For example, shortly after I rose on 9 October 2024, in front of court staff, the Defendant repeatedly shouted "scum" at junior counsel and the rest of the Claimants' legal team, ending her outburst with "injunct that".

### **The order sought**

13. The Claimants sought an injunction by which the Defendant would be prohibited from (i) "publishing any message to or about the Claimants' lawyers, or any person acting for, on behalf, or at the instruction of the Claimants' lawyers which abuses, belittles, demeans, or insults any such person"; and (ii) "using profane or otherwise grossly offensive language or imagery in communications address to the Claimants' lawyers, or in which they were copied".
14. The Claimants accepted that the Defendant could not be prevented from presenting her defence in these (or other) proceedings. The Claimants' draft order therefore contained express provision to exclude from the proposed restrictions documents formally filed in any legal proceedings and the subsequent use of such documents.
15. The draft order contained a penal notice.
16. It was without limit of time, albeit that in submissions counsel for the Claimants suggested that it might be possible to add an end date to the order if it was made.
17. The draft order related to all proceedings in which one or more of the Claimants and the Defendant are parties, including the present claim as well as extant proceedings before the London County Court (Insolvency Number 0458 of 2024). They have

arisen due to the Defendant's failure to pay an interim costs order of £15,000 made by Chamberlain J.

## **The legal framework**

### *Relevant case law and statutory provisions*

18. In *American Cyanamid v Ethicon Limited* [1975] AC 396, the House of Lords established that the test for whether to grant an interim injunction was: (i) whether there was a serious question to be tried; (ii) whether damages would be an adequate remedy for the plaintiff if the defendant's conduct were not restrained; (iii) if not, whether the defendant would be adequately compensated by the plaintiff's cross-undertaking in damages if the injunction were granted; and (iv) the balance of convenience. If matters were evenly balanced, the status quo should be preserved.
19. The Human Rights Act 1998 ("the HRA"), s.12(3) provides that no relief which might affect the exercise of the Convention right to freedom of expression is to be granted so as to restrain publication before trial "unless the court is satisfied that the applicant is likely to establish that publication should not be allowed". "Likely" in this context normally means "more likely than not": see the discussion of the case law in *Khan (formerly JMO) v Khan (formerly KTA)* [2018] EWHC 241 (QB) at [58]-[60].
20. By virtue of the Protection From Harassment Act 1997 ("the PHA"), s.1(1), a person must not "pursue a course of conduct - (a) which amounts to harassment of another, and (b) which [they know] or ought to know amounts to harassment of the other". By s.1(2), the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct did so. Under s.1(3) there are a series of statutory defences, including under s.1(3)(c) that "in the particular circumstances the pursuit of the course of conduct was reasonable".

### *The CPR and King's Bench Guide*

21. The overriding objective set out in CPR 1.1(1) requires the court to deal with cases "justly". This involves, under CPR 1.1(2)(b) and (d), dealing with a case "in ways which are proportionate to the nature, importance and complexity of the issues" and "(d) saving expense". Under CPR 1.3 the parties must assist the court in furthering the overriding objective.
22. Under CPR 3.1(2)(m), the court has the power to make "any...order for the purpose of managing the case and furthering the overriding objective".
23. The King's Bench Guide 2024, paragraph 2.3 requires that litigants in person "show consideration and respect to their opponents, whether legally represented or not, and to the Court."

## **Submissions and analysis**

### *The Defendant's conduct and its consequences*

24. The Claimants contended that the point had been reached where the Defendant's conduct was (i) impinging upon the Claimants' legal team's ability to fulfil its duties to the Claimants as their clients; (ii) adversely affecting the Claimants' ability to conduct these proceedings properly and in accordance with the overriding objective; (iii) leading to the Claimants incurring potentially irrecoverable costs; (iv) having the indirect effect of preventing Mr Gailani, a witness, from giving his best evidence; and (v) impeding the progress of the litigation, because, for example, it led to the Defendant's skeleton argument for the strike out/summary judgment application being omitted from the trial bundle (see my judgment on the order of proceedings: [2024] EWHC 2585 (KB) at [3]).
25. There is no doubt that the Defendant's conduct has fallen very far short of the expected behaviour of litigants in person set out at [23] above. I accept that it has had all the consequences set out in the preceding paragraph.

*The true nature of the order sought*

26. Mr Field, on the Claimants' behalf, sought to persuade me in oral submissions that the description of the order sought as a "protective injunction" was merely "colloquial": it was, he said, strictly, a case management order.
27. I respectfully disagree. The draft order expressly prohibits, or injuncts, the Defendant from doing specific things and puts her at risk of further contempt proceedings if she breaches the order. It is an injunction in both substance and form: the order itself expressly says that it is an injunction; the application was for a "protective injunction"; and the written submissions lodged in support of the application described it as such.
28. I therefore proceed on the basis that the order sought is an injunction.

*The cause of action rule and the quirk of this application*

29. As explained in Bean, 'Injunctions' (Fourth Edition) ("Bean"), at paragraph 1.03, there is "one overriding requirement" for an injunction, namely the existence of a cause of action entitling the applicant to substantive relief: see *The Siskina* [1979] AC 210 at 254, per Lord Diplock, as considered in *Convoy Collateral Ltd v Broad Idea International Limited Ltd* [2021] UKPC 24, [2023] AC 389. It is partly for this reason that if an interim injunction is granted before a claim setting out the cause of action has been issued, the Claimant is generally required to issue the claim shortly thereafter: this is what Freedman J ordered here.
30. The Defendant contended that the Claimants had failed to identify any cause of action arising from her communications that could ground any application for an injunction. I cannot accept that. On the evidence before me, the individual lawyers who have received the Defendant's communications, most notably Mr Gailani, would have a credible claim for harassment against the Defendant, contrary to the PHA, s.1(1).
31. Rather, the conceptual novelty of, and difficulty with, the application is that although brought in the name of the Claimants, it relates to the conduct of the Defendant towards different people, namely their lawyers.

32. Mr Field argued that although the Claimants' lawyers might benefit from the injunction, it was not really being sought for that purpose: rather, the Claimants were seeking it to ensure their claims could be properly disposed of, to avoid the legal advice they were receiving from being impeded by the Defendant's communications and to prevent them from incurring yet further wasted costs.
33. With respect I cannot agree with that characterisation of the application. It is, in substance, an application for an injunction to prevent the Claimants' lawyers from being harassed, albeit that it is brought by their clients and albeit that they might also be secondary beneficiaries of it.
34. Those lawyers have brought no application for an injunction or claim against the Defendant and I was told that they do not presently intend to do so.
35. This creates an obvious tension with the cause of action rule: there simply is no cause of action between the lawyers and the Defendant that is anticipated (quite aside from the fact that the application is not brought by the lawyers). This makes it impossible to assess whether the elements of the *American Cyanamid* test, principally the "serious question to be tried" element, are met. It also makes it difficult to grapple with the impact of the HRA, s.12(3): it is conceptually hard to assess the Claimants' likely success at a trial that is not at present anticipated.

*Exceptions to the cause of action rule*

36. While Mr Field was not able to take me to any other case in which an order of this kind had been made, he relied on the fact that the cause of action rule is subject to a series of exceptions, as discussed in *Bean* at paragraphs 1.05-1.07. On analysis, I do not consider that they provide the assistance he sought from them.
37. First, while it is right that a *quia timet* injunction to prevent anticipated behaviour can be made before a cause of action has crystallised, that says nothing about the ability of one party to, effectively, apply for an injunction on behalf of another, absent any intention on the other party to pursue the cause of action.
38. Second, while the exceptions include search orders and applications for anti-suit injunctions to restrain civil litigation in another jurisdiction, these relate to very specific factual circumstances, which justify a departure from the cause of action rule.
39. Third, Mr Field argued that the court could make the order sought in the exercise of the court's inherent jurisdiction to control its own procedures as well as the general case management power under CPR 3.1(2)(m); and that this could extend to an order regulating the communications in the County Court proceedings referred to at [17] above because they were incidental to these proceedings.
40. To some degree, therefore, this application seemed similar to those exceptions to the cause of action rule cited in *Bean* where the court has granted an injunction in order to protect its own proceedings.
41. In *Maclain Watson & Co. Ltd v International Tin Council (No. 2)* [1988] 3 WLR 1990, for example, the Court of Appeal granted an injunction to examine a judgment debtor in circumstances where the usual powers of the court to do so did not apply.

Part of the rationale for the decision was the need to ensure the effectiveness of any order made by the court.

42. In a similar vein, in *In re Oriental Credit Ltd* [1988] Ch 204, an injunction was granted to restrain a company director from leaving the country until he had complied with a Registrar's order to attend for oral examination.
43. However, I consider that these exceptions are fundamentally different to the position here. In both of these cases the injunction was granted so as to ensure the efficacy of an existing court order between two parties who were already before the court, litigating a cause of action. They do not involve any situation where the order is sought by one party, effectively to benefit another, with no such cause of action in train or even anticipated.
44. For these reasons I am not persuaded that the court has a sound jurisdictional basis for making the injunction sought.
45. If the Claimants' lawyers wish to restrain the Defendant from communications of the kind in which she has been engaging, in my view they will need to make an application for an interim injunction to that effect.

### **Conclusion and costs**

46. For these reasons the application for a protective injunction is dismissed.
47. As to costs, because the Claimants are the unsuccessful party on the application the consequence of the general rule in respect of costs set out in CPR 44.2(2)(a) is that they would pay the Defendant's costs.
48. However under CPR 44.2(2)(b) the court may make a different order in the exercise of its broad discretion with respect to costs. One matter that the court should have regard to in deciding what order to make is the conduct of the parties: CPR 44.2(4)(a).
49. Here, I am entirely satisfied that the Defendant's own shocking conduct in sending the correspondence in question has generated the need for this application. Moreover, in responding to the application, she was completely unapologetic about her conduct, asserting that the Claimants' lawyers "deserved" to be treated by her as they had been. There can be no basis for such an assertion. She made other entirely unmerited submissions such that the application was so misconceived that a Civil Restraint Order should be made against the Claimants' lawyers.
50. The Defendant has prayed in aid her rights to freedom of expression under Article 10 of the European Convention on Human Rights, set out in Schedule 1 to the Human Rights Act 1998. She is correct that this protects "not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative": *Redmond-Bate v DPP* [2000] HRLR 249 at [20]. However Article 10 is not an absolute right. There is nothing in Article 10 which precludes me from taking into account the Claimants' grossly offensive communications in the exercise of the costs discretion.



51. Moreover, the Claimants' conduct in bringing this application was reasonable. I have considerable sympathy for the position their lawyers have found themselves in. I can see no fair basis for the assertions repeated by the Defendant in submissions on costs to the effect that Mr Gailani's conduct has justified her in sending these sort of communications. The fact that they omitted to include the Defendant's skeleton argument for the strike out/summary judgment application in the trial bundle (see [2024] EWHC 2585 (KB) at [3]) is irrelevant to the costs issues on this application, contrary to the Defendant's submission.
52. Further, the application was based on an untested and novel area of law. This also renders the Claimants' conduct reasonable.
53. For these reasons, there should be no order for costs. This was the provisional view I indicated in my draft judgment. The later submissions I received have led me to confirm it. I note that the Claimants agree with his course. They could, of course, have chosen to seek their costs from the Defendant.
54. The requirements of the expected behaviour of litigants in person set out at [23] above need to be reiterated to the Defendant. If she continues to send correspondence of the sort appended to Gailani 5 she may well find herself the subject of yet another injunction and yet further potential contempt proceedings.
55. The injunction sought was a novel one. In my judgment the dearth of authority directly on this issue provides a compelling reason for an appeal on this issue to be heard, under CPR 52.6(1)(b). I have granted permission to appeal on that basis.