Neutral Citation Number: [2019] EWHC 3020 (QB)

Case No: HQ17M0498

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/11/2019

Before :

MR JUSTICE PUSHPINDER SAINI

- -

Between :

ABC	**Claimant**
- and –	
Google LLC	**Defendant**

- -
- -

The **Claimant, ABC**, in person
Mr J. Scherbel-Ball (instructed by **Pinsent Masons LLP**) for the **Defendant**

Hearing dates: 4 November 2019

- -

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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MR JUSTICE PUSHPINDER SAINI

MR JUSTICE PUSHPINDER SAINI :

This judgment is divided into 4 parts as follows:

I. Overview

1. This is an extraordinary case in that (despite the claim having been issued on 22 December 2017) the identity of Mr. ABC (the Claimant) remains unknown to both the Defendant and the Court. That fact provides the essential background for the issues which I will need to address in this judgment.

2. On 4 November 2019, I dismissed an application by the Claimant issued on 1 July 2019 ("the Application"). By the Application, the Claimant sought a number of orders including, most importantly, relief from sanctions imposed under an Order of Nicklin J dated 24 August 2018. By that Order the claim was (and remains) struck out. As appears in more detail below, Nicklin J's Order was directed as securing compliance with a basic obligation: that the Claimant serve a claim form with his full name and address. To this day, that has not happened.

3. The Claimant did not attend the hearing of his Application, despite the Court waiting an extra hour beyond the 10.30am start for the Claimant to attend. I was also satisfied on the basis of the written evidence before me that the Claimant was aware of the date and time for the hearing of his Application. Before dismissing the Application, I received and took account of detailed written submissions dated 1 November 2019 which the Claimant had sent to the Defendant's Solicitors under cover of an email of 4 November 2019 timed at 00.06 (the early hours on the date of the hearing of the Application). Counsel for the Defendant fairly took me to those submissions at the hearing.

4. At the hearing on 4 November 2019, aside from being invited to dismiss the Application, I was asked by Counsel for the Defendant to certify that the Application was totally without merit. Although I was minded to accede to this application, I was not willing to make such a decision without giving the Claimant an opportunity to make submissions and accordingly directed that he be given 7 days to make such submissions as he wished to put before me.

5. No such submissions were received, and the purpose of this judgment is to give my reasons for dismissing the Application and deciding that the Application was totally without merit.

6. I have directed that any further application to set aside or vary my order for dismissal of the Application is, if possible, to be heard by me. The reasons in this judgment are more detailed than they would otherwise have been in order to assist any other judge

who has to deal with an application to vary or set aside my order. I also need to give my detailed reasons for concluding that the Application was totally without merit.

II. The Claim and Procedural History

7. Before I turn to the complicated procedural history of the claim, I will summarise, insofar as is necessary, the nature of the parties and the claim.

8. The Defendant is well known. It is a corporation incorporated in Delaware which has its principal place of business in California, USA. The Defendant provides a number of internet services.

9. The Claimant describes himself as an entrepreneur currently involved in business, investment and civil society ventures in the UK and overseas. He says that he creates venture investment opportunities, through the medium of his business group and intends to raise venture funds by equity offerings. He complains that the continued publication by the Defendant of the materials complained of has prevented him from pursuing his ventures, causing him and his businesses to suffer substantial loss of earnings.

10. As to the publications in respect of which complaint is made, he pleads that he became aware in July 2015 that a report of a criminal conviction identifying the Claimant and posted anonymously was published by the Defendant in July 2014. The conviction has, he says, since become spent in July 2016, under the Rehabilitation of Offenders Act 1974. In summary, the Claimant alleges that: (a) the continued publication of his sensitive personal information by the Defendant has caused serious harm to his reputation and is defamatory of him, constituting libel and malicious falsehood; (b) that the Defendant has failed to respond to notice of the complaint, in accordance with the provisions contained in regulations and has forfeited the defence against this claim; and (c) that Defendant has breached data processing laws by processing untrue personal data about the Claimant and contrary to the data protection principles. The Claimant seeks an injunction and damages.

11. The Claim Form itself was issued on 22 December 2017. Prior to that, following a without notice application by the Claimant, Master Yoxall made an order on 4 December 2017 granting the Claimant permission to bring proceedings anonymously using the cypher "ABC".

12. However, paragraph 4 of that order provided that:

> "When the Claimant serves the claim form on the Defendant, he must serve a copy which shows his full name and address and a copy which is anonymised as aforesaid together with a copy of this order."

13. There was no compliance with that direction. Following a number of applications before Masters and Judges, Deputy Master Stevens made a further Order dated 18 May 2018 requiring the Claimant to comply with paragraph 4 of the Order of Master Yoxall within 14 days. Again, there was no compliance.

14. In August 2018, the Claimant brought an urgent application seeking interim injunctive relief in Court 37 which was heard by Nicklin J on 24 August 2018. Nicklin J adjourned the Claimant's application.

15. Relevantly, however, Nicklin J observed that:

    (i) It was "a remarkable state of affairs that [the Claimant had] managed to get to August [2018] when not complying with an order of the court"; and

    (iii) The provision of the Claimant's name "has already been ordered once by the court to be provided together with the address. The Claimant is going to comply with that order, and, if he does not, his claim is going to be struck out. The court is not in a position to progress this claim fairly and to dispose of it fairly until that information is provided."

16. In these circumstances, Nicklin J made an "unless" order requiring the Claimant to comply with paragraph 4 of the Order of Master Yoxall within 7 days, failing which the claim was to be struck out. There was a stay granted pending an appeal by the Claimant. The stay was to end when the appeal concluded. Unless the appeal was successful, the Claimant had 7 days to then comply with the Order.

17. On 14 September 2018, the Claimant filed an Appellant's Notice seeking to appeal the Order of Mr Justice Nicklin dated 24 August 2018. He did not file all the necessary accompanying documentation at the same time.

18. Although the appeal was pending, on 25 September 2018 the Claimant issued an application seeking various forms of relief including "relief from the sanction of Mr Justice Nicklin dated 24 August 2018". That application was heard by McGowan J on 12 November 2018. McGowan J dismissed the application and certified it as totally without merit.

19. McGowan J held that the application was not a proper application for relief from sanction, but was in fact an attempt to set aside paragraph 4 of the Order of Master Yoxall. At paragraphs 13-14 of her judgment McGowan J rejected the Claimant's argument that the Acknowledgment of Service was invalid because it had been signed by a Partner of the firm of solicitors representing the Defendant. At paragraph 15, the Judge rejected the Claimant's submission that there was no time limit for compliance with the Order of Master Yoxall.

20. On 11 April 2019, the Claimant issued an application seeking default judgment. He did not serve the application on the Defendant's solicitors. By order dated 30 May 2019, Master Davison refused the application and certified it as totally without merit.

21. By order dated 24 June 2019, Floyd LJ dismissed the Claimant's application for permission to appeal against the Order of Nicklin J (referred to at para [16] above). He observed that the appeal had no real prospect of success and there was no compelling reason for the Court of Appeal to hear it.

22. Accordingly, on 1 July 2019, the Claimant's claim was automatically struck out by operation of paragraph 2 of the Order of Nicklin J following the Claimant's failure to

comply with paragraph 4 of the Order of Master Yoxall. The same day, the Claimant issued the present Application.

23. By order dated 20 September 2019, Nicklin J rejected the parties' request that the Application be dealt with on the papers. He directed that any further request by the Claimant for the Application to be heard in private should be made to the Judge hearing the Application.

24. In these circumstances, the Application came before me for an oral hearing on Monday 4 November 2019. As indicated above, although he presented detailed written submissions and was fully aware of the date and time of the hearing, the Claimant did not attend.

25. I have set out the procedural history of this claim because it shows, in my judgment, that the Claimant's approach to the Court's orders and directions might fairly be described as abusive.

26. I do not make that observation lightly. In the approximate 2 year period since the claim was issued, the Claimant has brought numerous unsuccessful applications and an appeal in order to avoid complying with a clear order of Master Yoxall dated 4 December 2017, which simply required the Claimant to identify himself and his address to the Defendant.

27. The material before me also shows that a number of judges have explained to the Claimant that these basic requirements are necessary for the proper conduct of the Claimant's claims, which include claims for libel and alleged breaches of data protection legislation.

28. Regrettably, the Claimant simply refuses to accept this. He has adopted an approach which means that, to date, the claim has not progressed at all. Instead, through unwise and misconceived applications, the Claimant has wasted substantial amounts of court time (involving over, I understand, 10 Judges or Masters). He has also clearly caused significant costs to be incurred by the Defendant.

29. It is obvious that basic common law fair trial requirements require a defendant to know who it is being sued by. One does not need to resort to Article 6 to reach that conclusion but it would clearly have the same effect. It is hard to conceive of circumstances where civil process could proceed absent such identification.

III. The Application

30. The orders sought by the Claimant are:

(a) "relief from sanctions of the order of Nicklin J dated 24.8.18";

(b) "to allow right to pursue pending applications to vary or revoke paragraph 4 of the anonymity order, on which the sanctions order relied";

(c) "request for judgment in default of acknowledgment of service or defence"; and

(d) "substantive claim; and to prevent injustice."

31. The first order sought is important because unless the Claimant succeeds on that application, the claim remains struck out and the further orders sought become academic.

32. As I have identified above, the claim was struck out automatically on 1 July 2019 as a result of the unless order made by Nicklin J on 24 August 2018.

33. Given that fact and the circumstances which led to the Order, I have no hesitation in rejecting the Application and accepting the Defendant's submissions. Although the Claimant (in his detailed written submissions provided on 4 November 2019) describes the Defendant's position as "an opportunistic or unreasonable opposition to the application for relief from sanction", the Defendant was right to oppose the Application.

34. In my judgment, the Application is simply the latest of the Claimant's numerous attempts to circumvent his obligation to comply with paragraph 4 of the Order of Master Yoxall dated 4 December 2017. The Application and written arguments largely repeat the Claimant's arguments which have been rejected by (i) Nicklin J on 24 August 2018, (ii) McGowan J on 12 November 2018, (iii) Master Davison on 30 May 2019, and (iv) Floyd LJ on 24 June 2019.

35. In short, the Application is not a genuine application for relief from sanction but is, in substance, a further and improper attempt to:

(i) set aside the orders made by Master Yoxall and Nicklin J; and

(ii) to reargue that the Defendant's Acknowledgment of Service is invalid, which is not only obviously wrong, but has already been rejected by McGowan J on 12 November 2018.

36. In a genuine application for relief from sanction, the starting point must be that the sanction has been properly imposed and complies with the overriding objective. If no application to vary or revoke is made, it is not open for the applicant to complain that the order should not have been: see Mitchell v News Group Newspapers [2014] 1 WLR 795 at [45] per Lord Dyson.

37. But having considered the written material submitted by the Claimant, it is clear to me that the substance of the Application is to argue that the Order of Nicklin J and paragraph 4 of the Order of Master Yoxall should not have been made in the first place.

38. I refer, for example, to the following paragraphs of the Claimant's evidence:

(a) Paragraph 6: "[paragraph 4 of the Order of Master Yoxall] inadvertently requires that the name and address of the Claimant be disclosed to the Defendant in circumstances where doing so would inevitably harm the very interests of the Claimant the order protects and the Claimant is seeking to protect."

(b) Paragraph 7: "paragraph 4 of the anonymity order provides that the identity of the Claimant be disclosed to the Defendant, who has not only refused to disclose the identity of the anonymous poster of the offending materials, but automatically transfers details of court cases to the Lumen database….in the

circumstances, there is a real risk of reposting the offending materials, thereby rendering the anonymity order meaningless and stifling the claim."

(c) Paragraph 11: "In any event, since the anonymity order was made, there has been a material change of circumstances. The Defendant has failed to file a valid acknowledgment of service or defence and is therefore in default. It is believed that as a result, the Defendant is not entitled to defend the claim and privileged personal information of the Claimant required by the paragraph 4 of the order."

(d) Paragraph 12: "These and other concerns reveal the conflicting requirements of paragraph 4 of the anonymity order, causing the Claimant to make applications for variation or revocation of the paragraph."

(e) Paragraph 26: "As mentioned previously, paragraph 4 of the order is subject to pending applications for variation or revocation. It neither stipulates any timescale for compliance, nor provides any adequate safeguards against arbitrary abuse of the Claimant's rights and violation of the anonymity order".

39. The Claimant therefore seeks to avoid complying with the Orders of Master Yoxall and Nicklin J. It is the opposite of a genuine claim for relief. It is, in substance, an improper attempt to circumvent his failed appeal against the Order of Mr Justice Nicklin.

40. For completeness I add that even if it were a genuine application for relief from sanction, this is a plain and obvious case where that application for relief should be refused.

41. Applying the criteria in Denton v TH White Ltd [2014] 1 WLR 3926:

(a) The Claimant's breaches of the requirements of the Orders of Master Yoxall and Nicklin J are self-evidently serious and significant. In considering the "seriousness and significance of a breach", it is also necessary for the court to look at the underlying breach which led to the making of the unless order: see British Gas Trading Ltd v Oak Cash & Carry Ltd [2016] 1 WLR 4530 at [39] per Jackson LJ.

(b) The disclosure requirements imposed by the Orders of Master Yoxall and Nicklin J are fundamental for the proper conduct of these proceedings. Instead, the claim has failed to progress at all, but has resulted in voluminous correspondence and applications from the Claimant and an inordinate amount of public resources and judicial time being incurred without any progress in the claim.

(c) In this regard, the observations of Lord Neuberger in Global Torch Ltd v Apex Global Management Ltd (No.2) [2014] 1 WLR 4495 at [23] – [25]**,** emphasising the importance of compliance with court orders, are important:

> "[23] The importance of litigants obeying orders of court is self-evident. Once a court order is disobeyed, the imposition of a sanction is almost always inevitable if court orders are to continue to enjoy the respect which they ought to have. And, if persistence in the

> disobedience would lead to an unfair trial, it seems, at least in the absence of special circumstances, hard to quarrel with a sanction which prevents the party in breach from presenting (in the case of a claimant) or resisting (in the case of a defendant) the claim. And, if the disobedience continues notwithstanding the imposition of a sanction, the enforcement of the sanction is almost inevitable, essentially for the same reasons. Of course, in a particular case, the court may be persuaded by special factors to reconsider the original order, or the imposition or enforcement of the sanction.
>
> [24] Further, it is difficult to have much sympathy with a litigant who has failed to comply with an unless order, when the original order was in standard terms, the litigant has been given every opportunity to comply with it, he has failed to come up with a convincing explanation as to why he has not done so, and it was he, albeit through a company of which he is a major shareholder, who invoked the jurisdiction of the court in the first place.
>
> [25] One of the important aims of the changes embodied in the CPR and, more recently, following Sir Rupert Jackson's report on costs, was to ensure that procedural orders reflected not only the interests of the litigation concerned, but also the interests of the efficient administration of justice more generally..."

(d) There is no good reason why the default has occurred. The Claimant's reasons are irrelevant to his failure to comply and without merit.

IV. Conclusion

42. In my judgment, all the circumstances of the case militate against granting the Claimant relief. This is a paradigmatic example of the conduct of a litigant which has prevented the court and the parties from conducting the litigation efficiently and at proportionate cost. The Claimant has shown no respect for the Orders of this Court.

43. The case cannot proceed in the way which the Claimant wishes without compliance with the orders of Master Yoxall and Nicklin J. I respectfully adopt what Floyd LJ said explained in paragraph 4 of his reasons for refusing permission to appeal. He explained that the Order of Nicklin J was "designed to preserve both parties' right to a fair trial in accordance with Article 6 [ECHR]". It would not be consistent with such rights to allow the Claimant to continue to hide his identity from the Defendant and the Court. His identity would moreover be protected from further disclosure in the first instance by the anonymity order.

44. The history amply demonstrates that the Application is essentially a thinly disguised collateral attack on the orders and judgments of Master Yoxall, Nicklin J, McGowan J and Floyd LJ.

45. I agree with the Defendant that not only should the Application be dismissed, but I will also certify it as totally without merit for the purposes of CPR 23.12. I will address the question of making a Civil Restraint Order (CRO) (as referred to in that rule) following any submissions or applications made in that regard. In particular, the lack of knowledge of the Claimant's actual identity may pose challenges as to how such an order can be made and operate.

46. By way of postscript, I should add that following receipt of this judgment in draft, Mr. ABC asked for (and was granted by me) an extended period to make submissions. He failed to take that opportunity, and did not make any substantive submissions within the extended period. He then sought a yet further extension, which I was not willing to grant.

47. For the avoidance of any doubt, the claim remains struck out.