



Neutral Citation Number: [2020] EWHC 2070 (QB)

Case No: QB-2020-002055

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Date: Friday, 19th June 2020

Before:

MRS. JUSTICE EADY

Between:

MARK HOWELL

Claimant

- and -

(1) DAVID EVANS
(2) IAIN McNICOL

Defendants

The Claimant appeared in person
MS. RACHEL CRASNOW, QC (instructed by **Greenwoods GRM**) for the **Defendants**

APPROVED JUDGMENT

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MRS. JUSTICE EADY:

Introduction

1. This is the on-notice hearing of the claimant's application, which was for urgent injunctive relief and other directions.
2. In his first witness statement (dated 8th June 2020), the claimant explained that he is "*a member of, and Unite the Union delegate to, Vauxhall Constituency Labour Party*". He seeks to pursue these proceedings potentially with, as the claimant expressed it "*(2) at least one other member [of the Labour Party]*" and "*(3) at least one prospective parliamentary candidate on 8th June 2017 drawn from a confidential list P*". The claimant brings the proceedings against the first defendant, "*sued as representative of all members of the Labour Party, except the claimants and the second and third defendants*"; and the second defendant, who was the former General Secretary of the Labour Party and currently remains an ordinary member of that Party. The claimant also suggested that he may be bringing proceedings against "*at least one other employee, a public representative member, drawn from confidential list E.*" I have taken those details from the claimant's particulars of claim. I am going to return to the issue of the identities of the parties in due course.
3. By application of 10th June 2020, made without notice, the claimant sought urgent relief on this claim for a declaration that "*the defendants or any of them have breached rule 13 [that is, of the Labour Party rule book] and an order that the NEC [that is the Labour Party's National Executive Committee] expel such defendant or defendants subject to proper consideration of mitigating circumstances.*" That application came before Murray J on 12th June 2020, when it was adjourned to take place as an on-notice hearing today.
4. Due to the continuing restrictions imposed as a result of the coronavirus pandemic, this hearing has taken place remotely by videolink, using Skype for Business. That said, it remains a public proceeding and details of the hearing and how to access it were published on the Cause List. Members of the press and law reporters have been able to access the hearing, at which the claimant has been heard in person and the defendants have appeared by leading and junior counsel.

The Claim.

5. In his original skeleton argument (dated 9th June 2020), the claimant explained that his claim is "*made in contract, tort, equity, and the criminal code, against those members of the Party other than the claimant inasmuch as they caused the alleged wrongdoing.*" That "*wrongdoing*" is then explained in his skeleton argument as follows (see paragraph 3):

"D sought the victory of rival parties in constituencies that were key for determining the government of the UK. In so doing it breached its contract with the C and its non-contractual pact with the voting public of the UK, which includes C."
6. Though not entirely clear, the claimant's particulars of claim (dated 8th June 2020) also suggest that he makes allegations of breach of fiduciary duty and fraud.

7. The various allegations made by the claimant relate to the general election in June 2017. He says that evidence to support his claim came to his attention with the leak of a confidential report in the early part of this year; that report looked at communications between national officers of the Labour Party, between 2015 and 2018, to determine reasons for delay in dealing with allegations of alleged anti-semitism. I understand that this is a confidential internal Labour Party report, entitled, "*The Work of the Labour Party's Governance and Legal Unit in Relation to Anti-Semitism 2014-2019*" ("the report").

The Interim Relief Sought by the Claimant

8. Along with his application for interim relief, the claimant included a document entitled, "*Orders applied for with Reasons*"; that was dated 8th June 2020. In that document the claimant stated he was seeking orders, as follows (I summarise): first, that lists P and E and the report be kept confidential (list P was the list of potential other claimants; list E that of potential other defendants); secondly, a direction relating to any application to add further claimants and defendants to these proceedings. The claimant also sought various orders for further information from the defendants, and specific disclosure, and for an order that the first defendant suspend the second and third defendants pending the conclusion of investigations into conduct during the 2017 election.
9. The defendants resisted the application, saying that the claim was wrongly brought against the second defendant - who should be dismissed from the proceedings - and submitting that this was not a matter that was appropriate for urgent relief but was premature, without merit, and the court should refuse to grant the orders sought. The defendants further asked that this hearing be limited to giving directions for the next steps to be taken in these proceedings and raised a concern that the claimant had filed a copy of the report on the court file when it was said to be confidential.

The Parties' Respective Positions at this Hearing

10. At the hearing this morning, the claimant said that after receiving the defendants' skeleton argument and witness statement yesterday evening and over the course of the night, it became apparent that there were various matters of which he had not previously known, which meant that he no longer sought to pursue his application. After some reflection on the point during the hearing, the claimant withdrew his application in its entirety.
11. For the defendants it was said, however, that two matters remained outstanding: (1) relating to the identity of the second defendant and the cause of action against him, and (2) in relation to the confidential nature of the report that had been filed.
12. I will deal with those matters in turn.

The Parties

13. First of all, in dealing with the parties to these proceedings, in relation to any potential additional parties - whether as listed by the claimant in the earlier documents, P and E, or otherwise - the persons names are not parties presently before me and at the

moment there is no application to join any additional parties. As such, it seems to be common ground that there is nothing for the court to deal with in that regard.

14. As for the first defendant, the defendants have clarified that he is the prospective General Secretary of the Labour Party, his tenure being due to commence on 29th June 2020, and, as such, it is accepted that he may appropriately be named as defendant, being representative of the Labour Party (which is an unincorporated association). To the extent that requires a direction under CPR 19.1, that is not in dispute.
15. As to the second defendant, however, I understand his tenure as former General Secretary of the Labour Party ceased on 20th March 2018 and the defendants contend proceedings against him should be dismissed at this stage, on the basis that he has no personal contractual relationship with the claimant that is alleged to have been breached, owes no duty of care to the claimant, and given that no facts have been alleged which would give rise to a personal duty on the part of the second defendant to the claimant.
16. For his part, the claimant clarifies that he is suing the second defendant in his personal capacity as member of the Labour Party; he says that the rule book - which is the contract between the Party and its members - gives rise to a potential obligation between members themselves. The Claimant also says, however, that he pursues his claim against the second defendant as former General Secretary, in a representative capacity on behalf of the Labour Party.
17. At present, the most I can say is that it is not entirely clear to me as to what precisely is the cause of action against the second defendant. In frankness, it seems to me that this may be a matter that is developing in the claimant's own mind and in his reflections on the case and his position seems to have changed to some extent during the course of the earlier correspondence and at this hearing.
18. At this stage, however, I do not dismiss these proceedings against the second defendant. It seems to me that the appropriate course is to order the claimant to provide further information, specifically explaining the cause of action relied on in respect of the second defendant. The defendants are entitled to understand how the claim is being put against each of the defendants before they are required to serve a defence to this claim and that is, therefore, something that will need to be taken into account when I return to the question of further directions.
19. I note that the defendants have already intimated that they will seek to apply for the claimant's claims to be struck out. If, having received that further information relating to the second defendant, they consider that is an appropriate course then they can make that application at that stage, when the court will be better informed to deal with it.

The Report

20. I then turn to the question of the confidentiality of the report. This is a report that I understand has already been leaked and it may be that it is available more generally on the internet. That said, it is accepted by the parties that it contains information relating to the identities of others and also includes other data relating to particular individuals, which would breach their rights to confidentiality if published. Those are

individuals who have not had notice of these proceedings and have not been heard on this matter.

21. I have heard from two representatives of the press in relation to this matter and they have pointed out that the report is widely available on the internet and that this raises quite contentious issues of confidentiality. They had not been given copies of the parties' skeleton arguments and so are unable to properly understand the issues to which the report may go and, if the court is minded to make any order in relation to confidentiality, they would ask for the further right to be heard on the point, so that they might properly address these questions.
22. On the face of what I am told, the document that the claimant has filed seems to contain information which is, or should be, confidential to the first defendant (sued as representative of the Labour Party). The report includes information that is confidential, relating to specific individuals mentioned within it. Although it seems that the report has been more generally made available - having been leaked on the internet - that, so far as I am aware, has not been done with the approval of the first defendant (who represents the Labour Party, which is the owner of the report).
23. Moreover, the leaking of the report is, I am told, the subject of an investigation by the Information Commissioners Office, who is looking into the circumstances in which it has been leaked; I am told that the first defendant is cooperating with that investigation.
24. The court has not at this hearing been taken to any passages in the report and so issues relating to the disclosure of particular confidential information relating to other persons has not arisen during the course of this hearing. It is the defendants' concern, however, that that may happen. If, at some stage, reference is made to parts of the report, the document then goes into the public domain as a document referred to in an open hearing, and there has been no attempt to redact that information which should be confidential to other parties, or which is unnecessary and irrelevant for the purposes of these proceedings. If that occurred, the court may then be asked to go into private session, which would seem a disproportionate course given that appropriate steps might just be made to redact that which is private and/or irrelevant for the hearing. These are matters which one would expect the parties to deal with before a document was referred to in open court proceedings.
25. What is apparent is that reference to the report for the purposes of this hearing is entirely unnecessary, given that the claimant no longer pursues his applications; the problems foreseen by the defendants have thus not arisen. I am really being asked to consider what should be the position for the future; the defendants are effectively asking me to make an order to protect the identities of third parties which might otherwise be disclosed if the report is referenced as part of the court proceedings.
26. At this stage, I do not want to pre-empt such representations that may be made by those other parties. In the circumstances, it seems to me that I direct that the report be removed from the court file and reference should not be made to it until the parties are able to agree such parts that need to be redacted, or do not need to be referred to because they are just irrelevant and unnecessary for these proceedings, or that the appropriate application is made to the court and the point can be more fully

considered, on notice, and to allow that members of the press can be properly represented if that is considered appropriate.

27. I note that under CPR 39.2(5), where the court makes an order which places a degree of confidentiality on those who are parties to the proceedings, or which may then impact on that, any person who is not a party to the proceedings may apply to attend the hearing and make submissions or apply to set aside and vary the order. Although I have heard submissions from members of the press today, I accept their point that they are placed at a disadvantage because they did not have copies of the parties' skeleton arguments, or more information about these proceedings, and so are not in a position to make full submissions on this point. In those circumstances, it should not be taken that my ruling this morning prevents members of the press, or others who may have an interest in this matter, making an application to set aside or vary the order that I am making at the moment, which is that the report be removed from the court file.

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This judgment has been approved by Mrs Justice Eady.