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



No. KB-2024-000866
[2024] EWHC 1793 (KB)

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 11 April 2024

Before:

THE HONOURABLE MR JUSTICE MURRAY

B E T W E E N :

JONES NICKOLDS LIMITED

Claimant

- and -

IAN PEARCE

Defendant

MR Z SAMMOUR (instructed by rradar Limited) appeared on behalf of the Claimant

THE DEFENDANT did not appear and was not represented.

J U D G M E N T

MR JUSTICE MURRAY:

1 Yesterday, I heard the application dated 5 April 2024 (“the Application”) of the claimant, Jones Nickolds Limited (“JNL”), for the continuation of the interim non-disclosure injunction granted by Goose J on 25 March 2024 (“the Goose J Order”) at a without notice hearing (informal notice having been given) and for a related relief against the defendant, Mr Ian Pearce.

Mr Pearce’s nonattendance and his written representations to the court

2 Mr Pearce did not attend yesterday’s hearing and was not represented. He has been acting so far in these proceedings as a litigant in person. Although he did not attend in person, Mr Pearce sent an email to the court yesterday addressed to the King’s Bench Division Judges’ Listing Office. It appears to have been sent at about 1.00 a.m. yesterday morning (the email says: “Sent: Wednesday, April 10, 2024, 12:59 am”). This did not reach me before the hearing, but a hard copy was on the bench when I came into court. Attached to yesterday’s email in the same thread was an earlier email, dated 8 April 2024 (at 19:13) from Mr Pearce to the court. In each message Mr Pearce makes accusations against JNL and JNL’s solicitors, rradar Limited. In each message, Mr Pearce asks that the message be put before me.

3 I took time to read each of Mr Pearce’s messages carefully before hearing substantive submissions from JNL’s counsel, Mr Zac Sammour. Before the hearing, I had completed the pre-reading suggested by JNL in its skeleton argument, which included Mr Pearce’s witness statement, dated 5 April 2014. So, I was already aware of the full background of the case and Mr Pearce’s views on the principal issues before I read his email messages of 8 and 10 April 2024.

4 The return date for the Goose J Order was set out in that order at para.2. Mr Pearce said in his email dated 8 April 2024 that he was “unable to attend the hearing in person on 10 April” but he does not say why and he made no application either to seek permission to attend remotely or for the hearing to be adjourned to a date more convenient for him. Accordingly, there was no unfairness to Mr Pearce in proceeding with the hearing of which he had more than adequate notice.

5 I do not need to address every point raised in Mr Pearce’s two emails to the court, but he appears to consider, among other things, that JNL should not be permitted to file an updated skeleton argument after having sight of his evidence. That betrays a misunderstanding of the relevant procedure.

6 As to Mr Pearce’s other accusations against JNL and against rradar Limited, these are matters that Mr Pearce could have addressed in submissions to the court had he attended the hearing. I have, however, taken into account his views on those matters as set out in his witness statement and his two email messages. It is of course a matter for the court to consider whether, and, if so, to what extent, those submissions are accepted and/or are relevant to the limited purposes of yesterday’s hearing, the principal purpose of which was to determine whether to continue the injunctive relief granted by Goose J until the trial of this claim.

7 Mr Pearce’s assertion in his email of 10 April that the failure of the KB Listing Judges’ Listing Office to respond to his email of 8 April within 24 hours means that “the High Court

has failed to act in accordance with their statutory requirements” and therefore “this claim must be struck out by default” is misconceived.

- 8 Against that background, it was clear to me that there was nothing in either of Mr Pearce’s messages to the court that prevented the court from proceeding with yesterday’s hearing.

Background

- 9 JNL is a small family law firm that is currently acting for the defendant’s ex-wife in contentious divorce proceedings between her and the defendant, Mr Pearce. On 14 March 2024, an associate solicitor at JNL sent an email to Mr Pearce that was intended for another client of JNL (“the Email”).
- 10 I shall refer to the intended addressee of the Email as “AA”. I have granted an anonymity order and related reporting restrictions in relation to AA in the order that I made yesterday for reasons that I will return to later in this judgment. For present purposes, however, it is worth nothing that AA is not a public figure or otherwise well-known for any reason.
- 11 The Email includes, as part of the email thread, messages exchanged between JNL and AA on earlier days. The earliest message in the thread is in fact an email message from AA’s tax adviser, which was sent to AA and was forwarded by AA to JNL a few days before 14 March 2024.
- 12 It is clear from reading the Email that it contains confidential and legally privileged information of AA, including legal advice from JNL to AA, requests by AA for legal advice from JNL and related confidential advice from a third-party tax adviser.
- 13 The Email relates to divorce proceedings between AA and his ex-wife. Apart from the fact that Mr Pearce and AA are both clients of JNL and the fact that the Email was sent in error by an associate solicitor of JNL to Mr Pearce, there appears to be no connection between Mr Pearce and AA or between their respective divorce proceedings.
- 14 Mr Pearce appears not to dispute the confidential and legally privileged nature of the Email. His position appears to be that he has a civic duty to disclose the information to certain governmental authorities in the public interest. In other words, he has indicated that he will seek to rely on a public interest defence to JNL’s claim against him for breach of confidence.
- 15 It appears that the solicitor who sent the Email to Mr Pearce in error on 14 March 2024 did not immediately realise his mistake. However, by the next day JNL was aware of the error and asked Mr Pearce to delete the Email. He refused to do so.
- 16 On 22 March 2024, Mr Pearce informed JNL that he had disclosed the Email to certain third parties, although at that stage he simply said “I am currently speaking to Government Agencies” about the Email.
- 17 On 25 March 2024, JNL made a without notice application for an urgent interim non-disclosure order (“the Initial Application”) against Mr Pearce. Mr Pearce was given informal notice of the Initial Application which was sent to him by email, together with the supporting evidence and draft order. Mr Pearce e-mailed the court with limited submissions in relation to the Initial Application.

- 18 On 25 March 2024, Goose J heard the Initial Application and made the Goose J Order. On that occasion, he declined to order anonymity in relation to AA on the basis that his anonymity was protected in any event by the interim non-disclosure injunction. He also declined to grant the application for provision of information by Mr Pearce as to the identity of the persons to whom he had already disclosed the Email. However, he left it open to JNL to renew its applications for each of these forms of ancillary relief at the return date hearing.
- 19 Those applications have been renewed, although the scope of the information now sought by JNL has narrowed as a result of Mr Pearce having provided information as to the persons to whom he has disclosed the Email, namely HM Revenue & Customs (“HMRC”), the South Wales Police, Mr Stephen Doughty MP and the Information Commissioner’s Office. JNL seeks further particulars as to each third party to whom Mr Pearce has disclosed any or all of the information in the Email since 14 March 2024, including the identity of the third party, the date the disclosure occurred, and the nature of the information disclosed.

Reasons for making the Order

- 20 Having considered the documents provided by JNL, as well as Mr Pearce’s witness statement of 5 April 2024 and his written representations in his emails of 8 and 10 April 2024, I was satisfied at yesterday’s hearing that it was just and proportionate to grant the relief sought by JNL. I now set out my reasons more fully. They are as follows.
- 21 In relation to the continuation of the interim non-disclosure order in the Goose J Order pending the trial of JNL’s claim against Mr Pearce or further order of the court, I have had regard to the well-established principles that apply to the granting of such an order. Having reviewed all of the papers, taking into account Mr Pearce’s evidence and representations, and bearing in mind the strict test in section 12(2) of the Human Rights Act 1998, I am of the view that JNL is likely to establish at trial that:
- (i) the Email is plainly and obviously confidential and contains information that is protected by legal professional privilege;
 - (ii) the Email came into Mr Pearce’s possession in circumstances that made it clear to Mr Pearce that it had been sent to him inadvertently by an associate solicitor at JNL and that the information was confidential to AA and to JNL;
 - (iii) the Email came into Mr Pearce’s possession, therefore, in circumstances that gave rise to a duty of confidence owed by Mr Pearce to JNL; and
 - (iv) Mr Pearce has made a number of statements and taken certain actions (such as posting messages on X) that carry an express or implied threat to breach his duty of confidence by disclosing the Email, and/or information contained within it, to third parties without JNL’s consent.
- 22 It also seems to me that on a fair reading of the Email and having regard to all of the circumstances as disclosed by the papers filed for the return date hearing, JNL is likely to be able to defeat at trial a public interest defence that Mr Pearce may seek to advance to justify disclosure or unauthorised use of the confidential information in the Email. One of my primary reasons for this view is that a fair and impartial reading of the Email does not justify the sinister complexion that Mr Pearce puts on it. In a confidential annex to JNL’s skeleton argument, Mr Sammour sets out a compelling set of arguments to support the interpretation

that the Email does not evidence or disclose any impropriety. Having read the Email myself, I agree with those arguments and accept them. It is my view that it is likely that the judge hearing the trial of this claim would reach a similar conclusion.

- 23 It appears that Mr Pearce has had for some time a particularly contentious relationship with JNL arising out of JNL's acting for his ex-wife in their divorce proceedings. He has made a number of complaints about JNL to the Solicitors' Regulation Authority that do not appear to have resulted in any substantive action being taken against JNL, even by way of commencing an investigation. From the evidence filed by JNL, as well as Mr Pearce's own statements to JNL, it appears that Mr Pearce's principal motivation in adopting the position he has taken on the Email is not to protect the public interest, but rather to use the Email to embarrass or cause difficulties for JNL and, in particular, for the solicitors at JNL who are representing his ex-wife.
- 24 Mr Pearce has indicated that one factor on which he will rely to support his public interest defence is that on a Google search of AA's real name there appears to be some link between AA and the Mossack Fonseca/Panama Papers scandal.
- 25 In her witness statement dated 25 March 2024, which was filed by JNL in support of the Initial Application, Ms Claire Marie Nickolds, who is a partner in and director of JNL, said categorically, at para.25, that AA had nothing to do with that scandal. In an email to the court before the hearing before Goose J, Mr Pearce pointed out that a Google search of AA's real name revealed an apparent link with the scandal.
- 26 Accordingly, this was raised by JNL's counsel with Goose J at the hearing before him. JNL gave an undertaking to the court, which was included in Exhibit B to the Goose J Order, to provide a further witness statement by Ms Nickolds correcting the position.
- 27 JNL complied with that undertaking by providing the second witness statement of Ms Nickolds which is dated 26 March 2024. In that second witness statement, Ms Nickolds explained that she had consulted her colleagues, who were the principal solicitors handling AA's affairs during the course of her first witness statement, and neither she nor they were aware of any connection between AA and the Panama Papers scandal. She had not thought, however, at that time to do a Google search of AA's real name. She did so for the purposes of preparing her second witness statement and attached the results of her Google search to her second witness statement in a confidential exhibit.
- 28 Ms Nickolds' evidence in her second witness statement appears to confirm that, although AA's real name is associated in some way with the Panama Papers scandal, there is very little information about the nature and extent of that association. Furthermore, nothing in the Email appears to be related to the Panama Papers scandal. Although this will, of course, be a matter for the court at the trial of the claim, it seems to me likely that Ms Nickolds' evidence on this point (assuming there is nothing further linking AA to the Panama Papers scandal that emerges by the time of trial) will be accepted by the court. This limited association established by the Google search will not, therefore, provide Mr Pearce with any real support for a public interest defence to this claim.
- 29 For all these reasons, therefore, I am satisfied that it is just, convenient and proportionate to continue the non-disclosure injunction made by Goose J in the Goose J Order until trial of the claim or until further order of the court.

- 30 I can deal with the remaining three matters more briefly.
- 31 In relation to anonymity, I am satisfied that if AA's real name were to become associated with these proceedings, then that publicity would defeat the object of the proceedings, which is to prevent the potential harm that may flow to JNL and to AA to their relationship and to their respective reputations from Mr Pearce's alleged breach of the duty of confidence he owes to JNL in respect of the Email and the information it contains.
- 32 In my view, the interim non-disclosure injunction is not sufficient to provide the necessary protection against that risk because of the uncertainty of the scope of Mr Pearce's implied right to be able to refer to the confidential information in the Email and to the real identity of AA during the conduct of his defence of these proceedings, subject, of course, to any orders that might be made by the court about hearings in private and so on.
- 33 Accordingly, I have concluded that it is necessary to secure the proper administration of justice and to protect the interests of JNL and AA to make an anonymity order and related reporting restrictions in relation to AA. I am satisfied on the basis of the authorities cited by Mr Sammour that I have the power to do so, even though AA is not himself a party to these proceedings.
- 34 In relation to JNL's application for an order to provide further information, I bear in mind that JNL seeks mandatory rather than prohibitory relief. Given, however, the higher threshold that applies in this case by virtue of section 12(2) of the Human Rights Act 1998, which I have already decided is surmounted in this case, I am satisfied that it is just, convenient and proportionate to order this relief, which is necessary so that JNL can provide notice of my order of yesterday to the right individuals and entities in order to minimise the risk of inadvertent disclosure or misuse of the confidential information protected by my order.
- 35 Finally, in relation to service, I am satisfied that there are good reasons to permit service on Mr Pearce by email. Among other reasons, this appears to be a more certain way of communicating with him and it appears to be his preferred method of communication. Although he has not specifically confirmed that he is happy to accept service by email, he has indicated in an unqualified manner that he is happy for all communications to be sent to him by email. Bearing in mind that he is not legally qualified, I am satisfied that this is, in effect, his consent to service of court documents by email.
- 36 Those are my reasons for having made the order that I made yesterday on the Application. The order provides that the costs of and occasioned by the Application are reserved. That is the end of my ruling.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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(This transcript has been approved by the judge.)