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England and Wales High Court (Queen's Bench Division) Decisions

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Neutral Citation Number: [2014] EWHC 2808 (QB)

Case No: HO 14 X 0251 I

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL
31/07/2014

B e f o r e :

MR. JUSTICE BEAN

Between:

DANIEL HEGGLIN

Claimant

- and -

(1) PERSON(S) UNKNOWN

**(Being the person(s) responsible for publication of
Schedule A to the Order)**

First Defendant

- and -

(2) GOOGLE INC

Second Defendant

**Computer-aided transcript of the Stenographic Notes of Marten Walsh Cherer Ltd.,
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**MR. HUGH TOMLINSON QC and MR IAN HELME (instructed by Olswang LLP) for the Claimant
MR. ANDREW CALDECOTT QC and MS. CATRIN EVANS (instructed by Pinsent Masons LLP) for
the Second Defendant**

The First Defendant did not appear and was not represented.

HTML VERSION OF JUDGMENT

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MR. JUSTICE BEAN:

1. The claimant is a businessman and investor who previously lived in London and worked at Morgan Stanley in London but is currently resident in Hong Kong. He continues to have very close connections with the United Kingdom where he has a house and carries out substantial business. He is a director of a company which is in the process of preparing to list on the London Stock Exchange.
2. An anonymous individual, or possibly group of individuals, has been posting on a large number of internet websites abusive and defamatory allegations about the claimant. It is alleged by way of example that he is a murderer, a Nazi, a Ku Klux Klan sympathiser, a paedophile, a corrupt businessman who has accepted bribes from state officials, an insider trader, and that he has laundered money on behalf of the Italian Mafia. There is no evidence to suggest that any of this is true.
3. The claim form was issued on 20th June 2014. As yet, there have been no further pleadings. The claim against the second defendant (Google Inc.) is for an injunction pursuant to sections 10 and/or 14 of the Data Protection Act 1998 and the European Directive 95/46/EC:

"to prevent the processing of personal data of the claimant which is inaccurate and/or which is causing or is likely to cause him substantial damage or substantial distress."
4. There is also a claim for a *Norwich Pharmacal* order requiring Google to disclose such information within its possession or control as may be necessary for the claimant to identify the first defendant.
5. Google Inc. is incorporated in Delaware and located in California, and permission is accordingly required to serve proceedings on them out of the jurisdiction. Because the relief sought by the claimant was in the form of injunctions, his advisers sensibly made the application directly to a judge (in the event myself), along with an application for an interim injunction and a *Norwich Pharmacal* order.
6. These applications came before me two days ago. The original application notice had sought an interim injunction of relatively limited scope requiring Google to block specific sites listed in a schedule.
7. By a draft amended application notice served less than two clear working days before the hearing, the claimant applied for more extensive relief, requiring Google to take all reasonable and proportionate technical steps as might be necessary in order to ensure that such material does not appear as snippets in Google search results. I was not prepared to allow this greatly expanded application to be made on short notice and, in any event, it seemed to me that issues which it raised could only be determined at a trial.
8. I fixed the trial date for 24th November and gave directions which included the sequential service of expert evidence, first by Google and then by the claimant. In addition, I made a *Norwich Pharmacal* order about which there was little dispute. I should also record that Google have been taking steps to block specified sites containing the abusive material.
9. Before giving directions for trial or making any other order, I had heard argument on the issue of leave to serve the claim form out of the jurisdiction and granted that application for reasons to be given today. I am now giving those reasons.
10. The basic principles to be applied by the court in determining whether to exercise its discretion to grant permission to serve out of the jurisdiction are clear and well-established:

(1) The claimant must satisfy the court that there is a serious issue to be tried on the merits of the claim. In other words, there has to be a real as opposed to a fanciful prospect of success on the substantive claim.

(2) The claimant must satisfy the court that there is a good arguable case that the claim against the foreign defendant falls within one or more of the classes of case for which leave to serve out of the jurisdiction may be given. "Good arguable case" in this context means that the claimant has a much better argument than the foreign defendant. Where a question of law arises in connection with the dispute about service out of the jurisdiction and that question of law goes to the existence of the jurisdiction, e.g. whether a claim falls within one of the classes set out in paragraph 3.1 of Practice Direction 6B, then the court will normally decide the question of law as opposed to seeing whether there is a good arguable case on that issue of law.

(3) The claimant must satisfy the court that, in all the circumstances, England is clearly or distinctly the appropriate forum for the trial of the dispute and that the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction. Where a claimant seeks leave to serve proceedings on a foreign defendant out of the jurisdiction, the task of the court is to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice. In such a case, the burden is on the claimant to persuade the court that England is clearly or distinctly the appropriate forum.

11. For the claimant, Mr. Tomlinson QC relies on three of the jurisdictional gateways set out at paragraph 3.1 of CPR Practice Direction 6B:

"(2) A claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction.

(3) A claim is made against a person ('the defendant') on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and -

(a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and

(b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.

(9) A claim is made in tort where -

(a) damage was sustained within the jurisdiction; or

(b) the damage sustained resulted from an act committed within the jurisdiction."

12. In relation to the injunction gateway (paragraph 3.1(2)), the discretion to grant permission will not be exercised unless (a) an injunction is a genuine part of the substantive relief sought and has not been claimed merely to bring the case within the rule and (b) there is a reasonable prospect of an injunction being granted.

13. In relation to claims in tort, paragraph 3.1(9), the claimant must show that his claim is founded on a tort and either (a) damage has been sustained within the jurisdiction or (b) damage has resulted from an act committed within the jurisdiction. Requirement (b) obliges the court to look at the tort alleged in a common sense way and ask whether damage has resulted from substantial and efficacious acts committed within the jurisdiction regardless of whether or not such acts had been committed elsewhere.

"3.1(2) A claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction."

14. The first point made on this issue by Mr. Caldecott QC for the second defendant is that it is necessary to show a real basis for anticipating that the conduct complained of will be continued or repeated. He submits that, although there is some evidence of a threat to repeat by the first defendant, there appears to have been little activity since October 2013, and also points out that, since being notified of the

problem, Google has been taking steps to remove offending content from Google-hosted sites and to block URLs linking to the offending material which appear on its search results. He disputes that an injunction is necessary as a matter of practical reality.

15. I do not accept this submission. Google has indeed been co-operative rather than obstructive, but the question of whether it is doing all that it can, or all that can be done, to prevent re-publication of this offensive material is an issue for trial.
16. The claimant's cause of action for the statutory torts created by the Data Protection Act is clearly established in principle and there is at least a good arguable case for the grant of some form of injunction against the second defendant. What the width of that injunction should be is a question for trial.
17. I asked Mr. Caldecott whether he was aware of any case in which the decision on whether to give leave to serve out of the jurisdiction depended on the width of the injunction claimed or the width of the injunction which the court finds will probably be obtained at trial, and he was not able to do so.
18. I also hold that, on the information presently available to me, England is, in all the circumstances, clearly or distinctly the appropriate forum for the trial of this dispute and the forum in which the case can be suitably tried in the interests of all parties and for the ends of justice.

"3.1(9) A claim is made in tort where -

(a) damage was sustained within the jurisdiction; or

(b) the damage sustained resulted from an act committed within the jurisdiction."

19. As I have noted, the claimant has business interests as well as a home within the jurisdiction, and the defamatory material damages or risks damaging his reputation here. As for Google, this claim comes in the wake of the important decision of the European Court of Justice at Luxembourg in the Costeja González case. This established that Google Inc. is the data controller for the purposes of the European Directive in relation to its provision of web search facilities. The court held that Article 4(1) of the directive is satisfied when the operator of a search engine sets up in a Member State a branch or subsidiary intended to promote and sell advertising space offered by the search engine and which orientates its activity towards the inhabitants of that country.
20. I accept the submission of Mr. Tomlinson that, on this basis, there is at least a good arguable case that Google is under an obligation, enforceable in this jurisdiction, to comply with the requirements of the 1998 Act when processing the claimant's personal data, both when hosting a website on which such data appears or in the circumstances described in the ECJ's decision when operating a search engine such as google.co.uk on which his data is processed.

"3.1(3) necessary and proper party"

21. There is a lack of evidence at present as to whether the first defendant is or may be connected to this jurisdiction. Google were and remain willing to comply with any indication from me that a *Norwich Pharmacal* order would be justified without prejudice to their general arguments about service out of the jurisdiction. They raised no separate dispute under this heading; and clearly if leave to serve out of the jurisdiction is given, as I have given it, in respect of the substantive claim for an injunction, no separate issue arises in respect of the *Norwich Pharmacal* order.
22. For these reasons, I granted leave for the claim form to be served out of the jurisdiction on Google Inc. in respect of each of the causes of action in the claim

(See separate transcript for proceedings after judgment)