IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY
TECHNOLOGY AND CONSTRUCTION COURT

Claim No. C50MA125

Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Tuesday, 21st March 2017

Before:

HIS HONOUR JUDGE STEPHEN DAVIES
Sitting as a Judge of the High Court

Between:

PARTNERSHIP MEDIA GROUP

Applicant

-v-

OAKES & ORS

Respondents

Counsel for the Applicant: MR GILROY QC

Counsel for the Respondents: MR THOMAS

JUDGMENT APPROVED BY THE COURT

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JUDGMENT

HIS HONOUR JUDGE STEPHEN DAVIES:

1. In a witness statement which the first defendant, Mr James Oakes, made on 14th December 2016, and which he signed stating that he believed that all of the facts stated in it were true, he made a statement which was false and which he knew to be false, which was that he had not copied or retained or in any way used any of the 154,000 records comprising part of the claimant's database and that he had not ever forwarded them to Gmail or to any other web based email address.

2. In fact and in truth, as he now admits, he had copied and removed those records by transferring them to himself using Gmail and had then transferred them onto the system operated by the second defendant. I have granted permission to the claimant to bring committal proceedings against Mr Oakes for making that false statement in that witness statement and, as I have said, Mr Oakes has admitted that he has done so and that as a result, he has committed a contempt of court. I am now dealing with the question as to the appropriate sentence for that conduct.

3. The context of the case is that Mr Oakes had previously been employed by the claimant. He had left its employment and had begun a new job with a competing company, the second defendant, which was a company which was founded and owned by his cousin and aunt to enable him to set up in business on his own account. The claimant company, which was in the events business, maintained a database of contacts and had, as is not unusual, planted a number of fake entries known as seeds in that database. How that works is that if anyone makes improper use of that database they would send marketing type emails to the seed email addresses which would then come to the attention of the claimant who would in that way discover that someone had been using its database and would be able to find out who that was and why they were doing so.

4. That is what happened in this case because Mr Oakes had been sending marketing emails to people on that database, including the seeds, which had been discovered by the claimant. The claimant instructed solicitors who sent letters to Mr Oakes and the second defendant alleging that they were in breach of their duties owed to the claimant. In the ensuing correspondence there was a firm denial by the solicitors who were instructed by Mr Oakes and the first defendant that anyone had taken or copied or was wrongfully using that database. The claimant was not prepared to accept that denial and issued proceedings seeking a springboard injunction to stop the defendants from making use of that information and from competing with it during the period of unfair advantage.

5. That application was listed to come before the court on 15th December 2016 and, as part of their defence to that application, Mr Oakes made the witness statement to which I have referred. It was intended to be relied on at the hearing to resist the claimant's application and it was deployed for that purpose. The end result was that a limited order was made by me on 15th December 2016 together with a further provision for the joint instruction of an IT expert who was to ascertain who was responsible for the fact that the seeds had come to be on the second defendant's system in order, effectively, to establish whether or not it was Mr Oakes who had wrongfully taken or copied the database or whether it had happened in some other way.

6. When I say in some other way, as well as simply denying that it was him, Mr Oakes went on the offensive in his witness statement and sought to advance a case that it was equally plausible that, in fact, it was the claimant's officers or employees, because of their vindictive desire to shut down the new business being run by him and the first defendant, who might have deliberately planted these seeds in the first defendant's database in order, as I say, to bolster their case. Clearly, that was something which potentially had serious consequences for those concerned in the event that, as has subsequently transpired, it was discovered that one or other of the parties had engaged in dishonest and lying conduct.

7. After the hearing there was, it appears, some correspondence about the instruction of the IT expert and towards the end of January 2017 the expert was in the process of being appointed. It was at that stage, on 1st February 2017, that Mr Assassa, Mr Oakes' cousin and a director of the first defendant company, made and sent through the defendants' solicitors to the claimant's solicitors a witness statement in which he said that he had been told by Mr Oakes that Mr Oakes had indeed copied the database in question.

8. There was no witness statement at the same time from Mr Oakes, nor was there any subsequent explanation or apology from Mr Oakes. It was said at the time that this was because Mr Oakes was instructing new solicitors and about a week later, on 9th February, Mr Oakes produced a second witness statement having been assisted in its preparation by another firm of solicitors. There was some controversy at one stage as to whether the witness statement which had been served was the one which Mr Oakes intended to serve but, having seen and read a witness statement from the solicitor in question, who confirms that the first version served was served by mistake as the first draft I am satisfied that the amended version is the one which Mr Oakes intended to send.

9. In that witness statement, he accepted that he had told a lie in his first witness statement. He accepted that he had copied the data. He said that he had done so through laziness, because it was easier than obtaining the same data through publicly available sources. He accepted that that was incorrect. He then said in paragraph 11 that having initially denied the allegation he found himself in a position with nowhere to go but to carry on with the denial.

10. He said that once the claim had been initiated he appreciated that his cousin and aunt who had supported him would become saddled with a damaged business and the trouble and expense of the legal action which was no-one else's fault but his. He said he was embarrassed and found it difficult to admit what he had done and the trouble he had caused and he then found himself supporting that case by denying wrongdoing in his witness statement. He apologised to the court and to all of the parties, including the claimant.

11. The consequence of that admission was inevitably very damaging, indeed catastrophic, to him, to his defence of the case and to the second defendant and its defence of the case. I am told that the business of the second defendant has effectively come to a halt and that it has gone, or is in the process of going, into liquidation. On 22nd February, the claimant's application was restored for hearing before His Honour Judge Bird, sitting as a judge of the High Court, who granted a full springboard injunction against both of the defendants.

12. So far as the court's powers are concerned and the approach which the court should adopt I have helpfully been referred to section 14 of the Contempt of Court Act 1981 and I have also helpfully been referred to the analysis by His Honour Judge Simon Barker QC sitting as a judge of the High Court in the case of *Balli, Re Contempt of Court Act 1981 (Rev 1) [2011] EWHC 1736 (Ch)* and to a further more recent decision of the same judge in *Power & Ors v Hodges & Ors [2015] EWHC 2931 (Ch)* and I have had the benefit of reading those decisions and considering the appropriate approach.

13. The maximum term of imprisonment that can be imposed for an offence of contempt is two years. The purposes of imposing sanctions for contempt are threefold: punishment, deterrence and coercion. Coercion is not applicable in this case since it only applies where someone is continuing in contempt and it is deployed as a means of compelling that individual to desist from his continuing contumelious behaviour. In this case, therefore, it is punishment and deterrence which are in play.

14. The punitive element addresses the nature and gravity of the breach itself. The court will have regard to all relevant aggravating and mitigating features. The deterrence element reflects the public interest in ensuring that orders are complied with and made effective. Reference was made by HHJ Barker to a helpful checklist of factors produced by Mrs Justice Proudman in a case known as *Solodchenko No 2* (*JSC BTA Bank v Solodchenko & Ors [2010] EWHC 2404 (Comm)*) to which I also have been referred and have had regard. The court should follow conventional sentencing guidelines in criminal cases and allow, where appropriate, a discount for an early admission of responsibility.

15. The court should also consider whether or not the circumstances are such as to pass the custodial threshold and, if so, what sentence is appropriate. The court should consider whether or not the sentence should be immediate or should be suspended.

16. Here, there are a number of factors which can be said to aggravate the offence. Firstly, it is clear that the lie told by Mr Oakes was a lie directed to a fundamental and central issue in the case and was told consciously by him knowing that it would be used to defend himself and his company from attack by the claimant.

17. It was a lie which had previously been made in solicitors' correspondence and which was then repeated in a witness statement to which a statement of truth was attached. It was coupled with a counter-attack on the claimant, suggesting that it was the claimant who was responsible for what had happened, seeking to damage Mr Oakes and his new business, and raising at least the risk that if that account was believed the claimant and those personally involved might themselves have committed a criminal offence.

18. Secondly, it is the case that the lie was not immediately admitted. It was only admitted after six weeks or so and only then in circumstances where it appears that, as the single joint expert was going to be sent in to inspect, the truth would inevitably come out anyway. To that extent, it was not a purely voluntary admission. It was made knowing, as I say, that the truth would likely come out in any event before very long.

19. Thirdly, it put both the claimant and, as relevant, the second defendant company to significant extra cost. In addition to the hearing of 15th December, there was then the cost of instructing or trying to instruct the single joint expert and the cost of the second

hearing before HHJ Bird. All of that cost will almost certainly be irrecoverable by the claimant because the first defendant appears, at the moment, to have no money to pay and the second defendant, as I have said, is going into insolvent liquidation if not already there.

20. It could also be said that if Mr Oakes had told the truth from the outset either none or certainly significantly less of the costs of the legal action would have had to be incurred, although I should bear in mind that I am here only concerned with punishing Mr Oakes for the consequences of the lie in the witness statement and not the previous lies in earlier correspondence.

21. The other aggravating factor is the consequence on the second defendant company.

22. There are, however, a number of mitigating factors. I have already referred to the fact that there has been an admission. It was not immediate; to some extent, it was forced out of Mr Oakes but nonetheless it was, in the end, an admission before there was clear evidence from the single joint expert to prove that it was a lie. There was no question for example of Mr Oakes, as some people in his position do, maintaining the lie right up and in a final trial or indeed right up to and in committal proceedings themselves.

23. This is not, for example, akin therefore to many cases of this kind where a claimant in a personal injury action makes a false witness statement to obtain damages knowing that he or she is not entitled to them, which is persisted in at trial and beyond.

24. I also accept that there at least to some extent the lie was made under pressure. Having initially lied to his solicitors about the position and then being faced with proceedings and an injunction application in court, Mr Oakes had to decide whether or not to continue with the lie or to own up and tell the truth.

25. Of course, the honest thing to do would have been to own up, but I accept that Mr Oakes was in a difficult position by that stage, albeit due to his own lies in the first place. Again, in terms of comparing this with other cases, this is not the sort of case where someone decides to steal information from his former employer knowing all along that if it was discovered he would simply lie about it for as long and as hard as he could to avoid being caught out.

26. He has also apologised both to the court and to the claimant. The claimant is sceptical as to the sincerity of that apology and points in particular to two features. Firstly, an application apparently made by Mr Oakes to seek to vary the length of the restraint imposed by Judge Bird and, secondly, his later admission in a witness statement made on 28th February that, in addition to the 156,000 database, he had also uploaded information onto a OneDrive system and also had, it appears, used some of the claimant's precedents in the promotional material produced by the first defendant.

27. It does not seem to me that either of those two factors are of any great relevance to the exercise I am undertaking today because it does not seem to me that they are relevant to the lie with which I am concerned as opposed to the overall civil litigation which is still continuing. It does not seem to me that they undermine, in any material way if at all, the sincerity of the apology.

28. Mr Oakes is also entitled to ask the court to have regard to the fact that he is still a relatively young man, he is only 23 years old, and that he has no criminal record and there is no evidence that he has ever acted in this way previously.

29. I have been provided with a number of testimonials from people who know him, who speak highly of him, and I am happy to accept that this is out of conduct character on his part. He is not someone who has habitually gone around in business or otherwise lying or engaged in reprehensible behaviour. I should also have regard to the fact that in his life he has experienced a personal tragedy at a relatively young age.

30. I should also have regard to the fact that he has already suffered adverse consequences as a result of this lie. Firstly, he has lost his employment with the second defendant. He will find it difficult to obtain employment in any other similar role. Secondly, he will be financially straitened as a result. He has already been made liable on an indemnity basis for the claimant's costs of the case and he is clearly at risk of being made bankrupt since he, by his own admission, is currently unable to pay any of those costs. The company which his cousin and aunt set up to assist him has, as I have said, gone into liquidation and they, not surprisingly and rightly, blame him for that which has put him in a difficult position with his wider family.

31. Nonetheless, it is quite clear that this offence is so serious that it passes the custody threshold. The court cannot accept that anyone should lie in a witness statement in a serious matter and persist in that lie for some time without taking that extremely seriously. So far as the length of that custodial sentence is concerned, in my view, leaving aside the fact of the admission, having regard to all of the relevant factors an appropriate custodial sentence would be one of six months. There should be a discount of one third for the early admission and, therefore, a custodial sentence of four months.

32. I have however decided that it is appropriate to suspend that sentence by reference to all of the mitigation and the ongoing deterrent effect that this will have upon Mr Oakes. I will suspend that custodial sentence of four months on condition that Mr Oakes does not, for a period of twelve months from today, act or fail to act in such a way in relation to these substantive proceedings as leads to a successful application for committal being brought against him.

33. In other words, he will know that if he conducts himself in relation to these proceedings in any way so as to repeat his contempt of court and that is found to have been established as against him, then the four months' custodial sentence will be activated. It also follows, although of course I will hear any representations about this, that he will have to pay the costs of the committal proceedings which should of course be added to the costs he has to pay in any event.

MR THOMAS: My lord, as to the principle that he must pay costs, there is nothing I can say.

THE JUDGE: No.

MR THOMAS: As to the amount of costs, I may not be the best lawyer, it is not really my field to go through the statement of costs, it may be that that matter can be determined at the end of the proceedings, I do not know.

THE JUDGE: I am just looking at Judge Bird's order and I think that what he did was to order that the costs should be summarily assessed by way of a paper determination and I think that it would not make sense for these costs to be dealt with separately.

MR THOMAS: I have not spoken to my learned friend about it but I respectfully agree.

THE JUDGE: Yes, it would make sense perhaps for these costs to be summarily assessed at the same time as those other costs.

MR GILROY: May I just take instructions?

THE JUDGE: Yes, of course you can.

MR GILROY: Yes, nothing to add to that. Thank you.

THE JUDGE: So I will make an order that the costs be summarily assessed at the same time and in the same way as the costs payable under the order of 22nd February 2017.

MR THOMAS: Yes, sir, notwithstanding the sometimes contentious nature of these proceedings, can I offer two rounds of thanks, first of all to my friend who has been of great assistance to me as the traditions of the Bar dictate this morning. I have never met him before but I am much obliged and, secondly, to your lordship and to your lordship's staff for sitting on late in the way that you have done.

THE JUDGE: Thank you very much. I think that the only other two matters which I need to mention in open court are firstly that the court clerk has found a draft order to be used as a precedent in committal cases and I wonder whether or not the sensible thing to do would be for one of you to undertake to produce a draft order adapting that as appropriate?

MR THOMAS: Yes, can we invite the claimants to do it just for this reason; they have better experience of civil litigation than we do.

MR GILROY: I will happily do that.

MR THOMAS: I am obliged.

THE JUDGE: It that could be sent to the TCC email address then I can approve it and then the order should be served by the claimant's solicitors so that they have conduct of the whole process which makes things easier.

MR GILROY: Yes.

THE JUDGE: The second thing I should say is that having had my attention been drawn to the committal practice direction I understand I am required either to produce a written judgment or to direct that there should be a transcript of this judgment at public expense so that it is a public record and the latter course is what I shall do so that I will ask, if I may, the court staff to request that to be done.

MR THOMAS: I am going to agree with that, particularly in light of the condition, I think a public record of what your lordship has said is essential under the circumstances.

THE JUDGE: Yes.

MR THOMAS: I am obliged.

MR GILROY: Could I just raise one final matter? I have not raised this with my learned friend, because of the seriousness and importance of today, it would have been a distraction, but there has been direct communication with Mr Oakes and my instructing solicitors for further cooperation to do with the inspection of systems by an independent IT expert. I have a draft form of words and I apologise for ambushing Mr Thomas with this but I can assure him it is a matter that has been canvassed at length with his client. I wonder if I just add those words to him.

MR THOMAS: Your lordship, it is not in any way that I seek to be obstructive, I am, as your lordship may or may not know, a criminal advocate—

THE JUDGE: Yes.

MR THOMAS: —and I have been asked to assist Mr Oakes because of the criminal flavour, if I can put it that way, of proceedings today and it will no doubt, in the inelegance of my submissions, have become abundantly clear to the court that I am but a criminal hack.

THE JUDGE: Well, I would not regard that in any way as a badge of dishonour.

MR THOMAS: But the upshot of it is really this, he has or may have, I do not know, he may be acting alone or he may still have civil lawyers to deal with the rest, can I ask that it is not appropriate in my submission for me to advise him in terms of the civil litigation. If the position is that Mr Oakes has by himself said he will sign any document, it can be sent to him, I have no doubt he will sign it but—

MR GILROY: The reason I am raising it, I still have my learned friend's words ringing in my ears about the extent of cooperation Mr Oakes will give. We have requested of him that there be yet further cooperation in respect of an independent IT expert conducting a search of his systems and for the information that belongs to us be deleted and the IT expert, independent IT expert, being the judge of the best method of achieving those steps. That is all it is. I am perfectly happy to make these submissions as though Mr Thomas is not actually sitting to my right, as though Mr Oakes is sitting to my right and I am before the court. What I am trying to do is avoid spending several more thousand pounds on something that is really straightforward and has been the subject of correspondence with Mr Oakes.

THE JUDGE: I think that it is not appropriate to deal with it at this stage but I appreciate the desire not to waste further time and cost. What I can do, since the case is proceeding in the TCC, is to direct that Mr Oakes should provide a response—

MR GILROY: Yes.

THE JUDGE: —within three days of today.

MR GILROY: Thank you.

THE JUDGE: If he does not, then your instructing solicitors can send an application, which does not have to be by way of any application notice, it can simply be—

MR GILROY: By correspondence.

THE JUDGE: —by correspondence to the court and I will then make an appropriate order on the papers without the need for a further hearing.

MR GILROY: I am very grateful.

MR THOMAS: What I will say to your lordship and my learned friend and those he acts for should be under no illusion that what the tenor of my advice is going to be to Mr Oakes going forward from now.

THE JUDGE: It is clear that Mr Oakes will know that he cannot afford not to be anything other than cooperative in relation to this litigation going forwards. Finally, in order to avoid the proliferation of files on the court file there are now quite a few files in connection with this and previous applications. I think the court clerk has already mentioned this to you or your solicitors, Mr Gilroy, that the court staff would be grateful if they could be taken, I appreciate not immediately because there are not enough of you, but if we put them outside for someone to come and collect them?

MR GILROY: Yes, of course.

THE JUDGE: Very good, all right, I will leave those on the bench there. Could I echo my gratitude to both counsel? You have both provided me with very great assistance and I am pleased that we have been able to conclude matters in an expeditious way today. I also express my gratitude, as I should, to the court clerk for sitting through lunch.

[Hearing ends]