Courts and Tribunals Judiciary

SUMMARY

President Donald J. Trump -v- Orbis Business Intelligence Limited
[2024] EWHC 173 (KB): Mrs Justice Steyn DBE

References in square brackets are to paragraphs in the judgment of the Court

1. The Court has handed down judgment in this data protection claim today, following the hearing on 16 October 2023. The Court refused the Claimant's application to amend the Claim Form to add a claim brought pursuant to the Data Protection Act 1998 (**[90], [145]**). The Court ruled that the Defendant is entitled to summary judgment on the claim pursuant to CPR 24.2 (**[144]-[145]**). In addition, those parts of the Particulars of Claim identified in the judgment at **[99]** and **[129]** are, in any event, struck out pursuant to CPR 3.4(2)(a) (**[145]**).

Background

2. The claim concerned two of the memoranda in the so-called 'Steele Dossier', namely, 080 and 113, dated 20 June 2016 and 14 September 2016, respectively ('the Memoranda') (**[1]-[2], [9]-[10]**).

3. The Claimant brought a data protection claim alleging that the Memoranda contained allegations about him (his personal data) (**[25]**) which were inaccurate (**[28]**); and the Defendant's processing of his personal data breached his data protection rights.

4. In determining the applications, the Court did not consider or determine the accuracy or inaccuracy of the Memoranda [6].

The Amendment Application

5. The Claim Form brought a claim only pursuant to the UK General Data Protection Regulation ('UK GDPR') and the Data Protection Act 2018 ('DPA 2018'), which applies only to acts of data processing from 25 May 2018. The Claimant made an application to amend the Claim Form to add a claim brought pursuant to the Data Protection Act 1998 ('the DPA 1998'), which applies only to acts of data processing before 25 May 2018. (**[3], [73]**)

6. The Court ruled that in determining the Amendment Application, Civil Procedure Rule 17.4 applied (**[57]**). The Court applied the four-stage test identified at **[58]**.

7. The Court concluded that the relevant limitation period was 6 years, rejecting the Defendant's contention that it was one year (**[71]**). The Claimant did not dispute that

it was reasonably arguable that the proposed amendments had been sought outside the 6-year limitation period, or that they sought to add a new claim (**[61]**, **[73]**).

8. The Court decided that the new cause of action (under DPA 1998) did not arise out of substantially the same facts as were already in issue in the existing claim (under UK GDPR/DPA 2018), given that the acts of data processing, the remedies and the time periods in issue were different (**[81]-[87]**). That meant the Court had no power to allow the amendment (**[87]**).

9. If the Court had had a discretion to grant the Amendment Application, the Court would, in any event, have refused for the reasons given at [88].

The Strike Out/Summary Judgment Application

10. The Defendant made an application for summary judgment and or for the claim to be struck out ([5]).

11. A consequence of the refusal of the Amendment Application was that those parts of the Particulars of Claim which pleaded a claim under the DPA 1998, including in particular the claim based on preparation and dissemination of the Memoranda to three recipients in November 2016, fell to be struck out (**[97]-[99]**).

12. The claim for compensation for harm to reputation was based on preparation and dissemination of the Memoranda, and so fell away with refusal of the Amendment Application (**[98]**). There were no reasonable grounds for claiming for compensation for distress in respect of the only remaining act of data processing, namely storage/retention of the Memoranda from 25 May 2018 (**[116]-[121]**). And "nominal damages" were not available (**[122]-[129]**). The Court ruled that the Claimant has no reasonable grounds for bringing a claim for compensation or damages, and no real prospect of successfully obtaining such a remedy (**[129]**).

13. The only other remedy claimed was for a compliance order erasing or restricting processing of the Memoranda. An erasure order would be pointless, and unnecessary, in circumstances where the Dossier was freely available on the internet, and the Defendant had in any event undertaken to delete the copies it held ([131]). A restriction order would not prevent mere storage or acts of processing undertaken for the purposes of defending a legal claim. As it was not alleged, and there was no evidence, that the Defendant had processed the Memoranda since 25 May 2018 in any way that would be caught by a restriction order, and was not threatening to do so, there was no real prospect of the court granting a restriction order ([134]-[137]).

14. As the Claimant had no real prospect of obtaining any of the remedies he sought, the Defendant was entitled to summary judgment on the whole claim ([144]).

1 February 2024