Hell hath no fury like an employee scorned?

The High Court has ordered that an employee who was dismissed during his probationary period should be restrained from harassing the Chairman of the company and must return copies of all information that he had taken from the company.

What happened in this case?

The claimant in this case was the Founder and Chairman of an asset management company (the Company). In 2023, the Company appointed the Defendant to a management position. However, there were a number of complaints about the Defendant's conduct, which resulted in him being dismissed during his probationary period. In response, he brought an unfair dismissal claim in the Employment Tribunal, but the claim was struck out as he did not have the two years' qualifying service needed.

At some point after his dismissal, the Defendant turned up at the Claimant's house and blocked his driveway for three hours. The Claimant invited him into his home and the Defendant pleaded for his job back. The Claimant said this was a matter for HR and not for him. On 31 May 2024 the Defendant sent an email to the Claimant in which he set out the names of several individuals and a company and included hyperlinks to various webpages. The Defendant stated that most, if not all, the names would be familiar to the Claimant and his staff would be interested in hearing about them. The suggestion was that the named individuals and company were

disreputable and were connected to the Claimant and the Company. The email also alleged that the Claimant and Company were involved in multiple frauds and false accounting. The Defendant went on to make various threats including that:

- he had the power to *"completely destroy"* the Company and if the law could not provide him with a remedy that he would *"have to fight dirty"* until the Company financially compensated him for his losses;

- he would email everyone who worked at the Company, the FCA, HMRC and the Serious Fraud Office, as well as others connected to the Company's projects;

- he had secretly recorded conversations with the Claimant and taken emails and documents from the Company;

- he could, and would, hound the Company *"like a rabid dog"* and that he could, and would, *"completely destroy"*the credibility and *"fragile mental health"* of five individuals at the Company;

- he had run someone over who had threatened him, stating that *"…he didn't see me coming, there was no witnesses, I'm too smart to leave any evidence behind"*;

- he had engaged in extensive reconnaissance and surveillance of the Claimant *"both in your manor and online"*;

- if he was ignored he would *"light so many fires"* around the Company that the Defendant would only be able to

watch if all *"burn to the ground"*; and

- if he did not receive a settlement by a certain date the Claimant could watch his staff leave and see things *"go up in flames".*

The next day, the Defendant sent a truncated version of the email to the Claimant three times via WhatsApp. A few days later, the Defendant sent an email to individuals at the Company who were closely connected to the Claimant. The email was substantially the same as the email of 31 May 2024, save that it told the recipients that they too would be damaged by the publicity that he planned to generate. He addressed to them the same demand for money that had been made to the Claimant.

On 6 June 2024, the Claimant made a "without notice" application under the Protection from Harassment Act 1997 for an injunction to restrain the Defendant from approaching him, communicating with him and/or from carrying out his threat to publish material to third parties. The injunction was granted on an interim basis. The Defendant was also ordered to serve on the Claimant's solicitor (a) copies of all communications already made to any third party about the Claimant, his family, the Company or its staff; and (b) copies of all information obtained by the Defendant from the Company which was in his possession or the possession of a third party.

On 28 June 2024, the Defendant stated that he had nothing to disclose as he had not made any communications to any third party. However, he refused to hand over copies of the

information he had taken from the Company on the basis that he needed to keep it to act as a whistleblower and to bring a counterclaim.

On 12 July 2024, a "return date" hearing was held to consider whether the injunction should be discharged or continue, pending the full trial. The Defendant did not attend the hearing.

What was decided?

The High Court ordered that the injunction should continue until the full trial of the claim.

The Court held that it was likely that the statements made in the email would be found to be *"…deliberate, unacceptable, oppressive, highly objectionable and of a gravity to sustain criminal liability under the Protection from Harassment Act 1997".* Their tone was intimidating, and they threatened to ruin the Company and damage the Claimant's reputation. There was also a threat of physical violence and the *"unsettling"* claim that the Defendant had been carrying out surveillance on the Claimant.

The messages were targeted at the Claimant and aimed at extracting money from him. The Defendant was persistent – he had promised to hound the Company like a *"rabid dog"* and appeared to be carrying out the threat. He had since taken to leaving intimidating voice messages with the Claimant's solicitors and had submitted two job applications to the Company for roles he did not appear to be qualified for.

The threats were also likely to amount to blackmail, given that they constituted demands with menaces and there was no lawful basis for them. This meant that the Defendant's right to freedom of expression did not have much weight and would not stand in the way of a final injunction.

At the hearing the Claimant gave evidence that the Defendant had mischievously, or wrongly, linked him and the Company to parties and online material that had nothing to do with them in order to suggest wrongdoing. The Claimant also denied all the allegations of fraud. If established at trial, this would add to the oppressive nature of the conduct (although, even if the allegations were true, they could be found to have been advanced for an improper purpose, meaning they would still be oppressive and unacceptable).

There was also a strong case to say the Defendant knew (or ought to have known) that his conduct amounted to harassment – any reasonable person in his position would have recognised this. The Claimant had given evidence that he was genuinely frightened of the actions that the Defendant could take to harm him and the Company.

Turning to the Defendant's failure to comply with the order to hand over the documents he had taken from the Company, the Court said that the reasons offered by the Defendant were not good reasons in law. The Court referred to the recent decision of the High Court in Payone GmbH v Logo [2024] EWHC 981 (KB) where it was said that *"It is well-established that the Courts will not sanction employees helping themselves to, or retaining, their employers documents for the purposes of future litigation, or anticipated regulatory issues or protected disclosures, or even taking legal advice".* Accordingly, the Defendant was ordered to comply

with the order, or put forward a valid legal reason for not doing so.

What does this mean for employers?

Although situations like this are thankfully rare, this case reminds us that if a disgruntled former employee wages a campaign of harassment against employees of the company, there is a route available to restrain them. Harassment in this context covers more than just threats of physical violence but includes any action which could cause alarm or distress. For example, things like watching or following someone or threatening to publish or publishing humiliating, offensive or upsetting content about them. Where there have been at least two instances of such harassment, this will count as a course of conduct which could give rise to a claim under the Protection from Harassment Act 1997.

Employers should also be mindful that they can be vicariously liable for the harassment of their employees in the course of their employment under the Protection from Harassment Act 1997. Unlike harassment under the Equality Act 2010, there is no "reasonable steps" defence available to an employer in this situation. Therefore, if an employee has suffered harassment at work on one occasion, employers should take swift action to protect the employee at work to avoid a second incident which could give rise to a claim.

RBT v YLA

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss

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