[2020 Gib LR 214]

ABC v. XYZ

SUPREME COURT (Yeats, J.): July 14th, 2020

Injunctions—interlocutory injunctions—balance of convenience—applicant's former partner restrained from disclosing existence and nature of parties' secret relationship and restrained from contacting applicant—real prospect of success at trial in establishing reasonable expectation of privacy

The applicant applied for interim injunctions restraining the respondent from harassing or assaulting him or publishing or otherwise disclosing any information regarding the parties' relationship.

The applicant was a local man and the respondent was a Spanish woman living in Spain. They met in Spain in or about 1972 and started an intimate relationship. At the time, the respondent had two young children. She had a third child in 1972 whom the applicant believed to be his. In 1985, the applicant adopted the three children and they bore his surname as well as that of the mother (as was customary in Spain). The parties maintained their relationship until 2020. The applicant claimed that they did so in secret. He would visit regularly but their relationship was not that of a married couple. For religious reasons the applicant had not told his family in Gibraltar about the relationship.

The applicant, who was disabled, alleged that, in February 2020, the respondent had attacked him and that he had feared for his life. Their daughter had intervened. He left the respondent's flat the following day and did not return. He alleged that since then she had made repeated demands for money and had repeatedly threatened to come to Gibraltar to assault him and expose the fact of their relationship and intimate details to his family and friends, which the applicant said would be devastating because he would be ostracized by his family and religious community.

The applicant applied for interim injunctions restraining the respondent from disclosing the existence and nature of their relationship and restraining her from harassing or assaulting him.

Section 12 of the English Human Rights Act 1998 provided:

"(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made ('the respondent') is neither present nor represented, no such relief is to be granted unless the court is satisfied—

(a) that the applicant has taken all practicable steps to notify the respondent; or

(b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed."

The applicant submitted that (a) regardless of what the court might think normal or acceptable, it should consider how the parties themselves viewed their relationship and their expectations of privacy; (b) they had agreed that their relationship would be kept secret; (c) previous case law showed that the court would protect non-sexual private information; and (d) the applicant was being harassed by the respondent, receiving almost daily telephone calls from her in many of which she would threaten him with physical harm and the exposure of their relationship. The applicant sought an order that he be allowed to serve this without notice application, and any order setting out the injunctive relief granted, by personal service in Spain.

Held, granting the application:

Misuse of private information

(1) The English authorities referred to the court in respect of the test to be satisfied before an interim injunction based on the tort of misuse of private information could be granted were concerned with s.12 of the English Human Rights Act 1998, which provided that before any relief was granted which might affect a person's Convention right to freedom of expression (here, the right afforded by s.10 of the Gibraltar Constitution) the court must be satisfied that "the applicant is likely to establish that publication should not be allowed." "Likely to establish" had been said generally to mean "more likely than not." The UK Parliament had decided on a higher threshold for these types of interim injunctions (compared to that set out in the *American Cyanamid* case) so as to safeguard the media's right to freedom of speech. Section 12 of the English Act did not extend to Gibraltar and there was no equivalent provision. Whether the courts could and should approach the test in a similar manner so as, arguably, to maintain a better balance between competing constitutional rights was for another day. The present case concerned alleged blackmail. There could

be no competing right to freedom of expression in such a case. The court would therefore follow the guidance set out in *American Cyanamid.* The court would ask itself: Was there a serious question to be tried (*i.e.* did the applicant have a real prospect of success in his claim for a permanent injunction at trial)? If so, would damages be an adequate remedy for a party who suffered loss either as a result of the grant of an injunction or by the court's refusal to do so? If damages were not an adequate remedy, where did the "balance of convenience" lie? The court would determine the matter in two stages. First, did the applicant have a reasonable expectation of privacy in relation to the information? If so, the court would consider the "ultimate balancing test," namely did the respondent have rights which were to be balanced against the applicant's right to privacy? The court would resolve these questions by asking whether, in respect of each of them, the applicant had a real prospect of success at trial (paras. 7–10).

(2) In the present case, the applicant sought to prevent disclosure of the very existence of the relationship. Without more, this would seem a strange proposition as the parties had been in a relationship for 48 years and the applicant had adopted the respondent's three children (one of whom he considered to be his biological child). There had been significant financial support over the years. The parties must have considered themselves to have been a family unit. The applicant was not married nor in another relationship. Underpinning the applicant's expectation of privacy was his family's deeply held religious beliefs. The evidence was that if his family were to find out about his relationship with the respondent he would be excommunicated and ostracized. Clearly, the fact that the parties were in a relationship was not a matter which of itself was one which was private. It did not fall within categories given special protection, such as medical records or intimate details of sexual activity. The general test as to whether information was private was what a reasonable person of ordinary sensibilities would feel if placed in the same position as the applicant and faced with the same publicity. The court accepted that an applicant could potentially have a reasonable expectation of privacy in relation to a secret relationship (paras. 11–16).

(3) Although a proper assessment of the evidence could only take place once the respondent appeared and presented her side of the case, at the present stage and on the evidence before the court, the court was satisfied that the applicant had a real prospect of success of establishing at trial that he had a reasonable expectation of privacy as to his private relationship with the respondent. The court had to consider what rights were to be balanced against the applicant's rights under s.7 of the Gibraltar Constitution to respect for his private life. This was a blackmail case. The balance came down firmly in favour of granting the injunction (paras. 21–22).

Harassment and assault

(4) If the applicant's evidence were accepted, all the ingredients of the tort of harassment were present. Those ingredients had been summarized

as follows by the English High Court: (i) there had to be conduct which occurred on at least two occasions; (ii) which was targeted at the claimant; (iii) which was calculated in an objective sense to cause alarm or distress; and (iv) which was objectively judged to be oppressive and unacceptable. (v) What was oppressive and unacceptable might depend on the social or working context in which the conduct occurred. (vi) A line was to be drawn between conduct which was unattractive and unreasonable, and conduct which had been described in various ways including "torment" of the victim or such as which would sustain criminal liability. In the present case, the applicant had been threatened with assaults in Gibraltar and his evidence was that he feared such an assault might take place. He was disabled and unable properly to defend himself. Having regard to the applicant's evidence, he had a real prospect of success in seeking a permanent injunction at trial. Damages were not an adequate remedy. The balance of convenience fell squarely in favour of granting the injunction. The respondent would not be prejudiced by being restrained from communicating with or approaching the applicant, his home or workplace. The evidence was that she did not ordinarily come to Gibraltar. If she chose to do so whilst the order was in place, the proposed restraint measures would not restrict her movement to any significant degree (paras. 26–28).

Jurisdiction

(5) The court had jurisdiction to deal with the case notwithstanding that the respondent was a Spanish national living in Spain because the threatened disclosure of private information and/or the further harassment or assault of the applicant would take place in Gibraltar. Article 7(2) of Regulation (EU) 1215/2012 (the Brussels Recast regulation) provided that a person domiciled in a member state could be sued in another member state "in matters relating to tort, delict or quasi delict, in the courts for the place where the harmful event occurred or may occur." In the present case there was evidence that torts might be committed in Gibraltar unless the respondent was restrained (paras. 29–30).

Anonymization of the parties

(6) CPR r.39.2(4) allowed for the anonymization of parties and provided:

> "The court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that party or witness."

The court would grant an anonymity order restricting the publishing of the parties' names or any details which might lead to their identification. This was necessary to secure the proper administration of justice. The court considered, first, that this was a case of alleged blackmail and it must follow that the applicant's name be anonymized otherwise he would lose the protection that he was seeking if the allegation were proved; secondly, in the present case identifying the parties would have the effect of publishing the very essence of what the applicant sought to restrain, *i.e.*

existence of the relationship between them; and thirdly, there was also no real value in identifying the parties which would militate against granting an anonymity order. Disclosure of the respondent's name would not lead to the identification of the applicant but the court nevertheless extended anonymity to the respondent as it was only fair to do so. In addition, the court directed that no non-party shall have access to the court file until further order (paras. 32–34).

Hearing in private

(7) The court granted an order sought by the applicant that the hearing take place in private. The court plainly had the power to hear applications in private where it was necessary for the proper administration of justice. CPR r.39.2(3) listed a number of situations which could lead to a hearing taking place in private, which included:

> "(a) publicity would defeat the object of the hearing . . . (c) it involves confidential information . . . and publicity would damage that confidentiality . . . (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing . . . (g) the court for any other reason considers this to be necessary to secure the proper administration of justice."

All of those factors were present in this case. To balance the fact that the hearing was held in private, the judgment was handed down in public (paras. 35–36).

Service by alternative means out of the jurisdiction

(8) The applicant would be permitted to serve this without notice application, and any order setting out the injunctive relief granted by the court, by personal service in Spain. Alternative service was permitted by CPR rr. 6.15 and 6.27 which, in effect, provided that the court might authorize service by a method not otherwise permitted by the rules if it appeared that there was good reason to do so. This was an exceptional case in that service needed to take place quickly for the orders to be effective (paras. 37–40).

Cases cited:

(1) *American Cyanamid Co.* v. *Ethicon Ltd*., [1975] A.C. 396; [1975] 1 All E.R. 504; [1975] R.P.C. 513, applied.

(2) *Ash* v. *McKennit*, [2006] EWCA Civ 1714; [2008] Q.B. 73; [2007] 3 W.L.R. 194; [2007] EMLR 113, followed.

(3) *Bayat Telephone Systems Intl. Inc.* v. *Cecil*, [2011] EWCA Civ 135; [2011] 1 W.L.R. 3068; [2011] C.P. Rep. 24, followed.

(4) *Campbell* v. *MGN Ltd.*, [2004] UKHL 22; [2004] 2 A.C. 457; [2002] 2 W.L.R. 1232; [2004] 2 All E.R. 995; (2004), 16 BHRC 500; [2004] EMLR 15; [2004] HRLR 24; [2004] UKHRR 648, *dictum* of Lord Hope applied.

(5) *Cream Holdings Ltd.* v. *Banerjee*, [2004] UKHL 44; [2005] 1 A.C. 253; [2004] 3 W.L.R. 918; [2004] 4 All E.R. 617; [2004] HRLR 39; [2004] UKHRR 1071; [2015] EMLR 1, considered.

(6) *Dowson* v. *Chief Constable of Northumbria*, [2010] EWHC 2612 (QB), applied.
(7) *Majrowski* v. *Guy's & St. Thomas's NHS Trust*, [2006] UKHL 34; [2007] 1 A.C. 224; [2006] 3 W.L.R. 125; [2006] 4 All E.R. 395; (2006), 91 BMLR 85; [2006] ICR 1199; [2006] IRLR 695, *dicta* of Lord Nicholls considered.
(8) *Ntuli* v. *Donald*, [2010] EWCA Civ 1276; [2011] 1 W.L.R. 294; [2011] C.P. Rep. 13; [2011] EMLR 10, considered.

Legislation construed:

Crimes Act 2011, s.93(1): The relevant terms of this sub-section are set out at para. 24.

Civil Procedure Rules, r.39.2(3): The relevant terms of this provision are set out at para. 35.
r.39.2(4): The relevant terms of this provision are set out at para. 31.

Human Rights Act 1998, s.12: The relevant terms of this section are set out at para. 7.

Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of December 12th, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels Recast), art. 7(2): The relevant terms of this paragraph are set out at para. 30.

D. Feetham, *Q.C.* and *D. Martinez* for the applicant;
The respondent was not present and was not represented.

1 **YEATS, J.:** This is an application for interim injunctions restraining the respondent from harassing or assaulting the applicant and restraining the respondent from publishing or otherwise disclosing any information concerning the relationship between the parties.

2 I heard the application in private on July 8th, 2020. The application was made without notice to the respondent. I reserved my judgment but directed that the parties' names be anonymized to *ABC* v. *XYZ* in the Registry's records and that the court file be sealed until further order. For reasons which I will now set out, I am granting the interim injunctions sought by the applicant and will extend the orders relating to privacy and anonymity.

Background

3 The applicant is a local man. The respondent is a Spanish woman living in Spain. They met in Spain on or about 1972 and struck up an intimate relationship. At the time, the respondent had two young children of her own. A child, who the applicant believes is his child, was born to the respondent in 1972—although it is possible that she was fathered by

another man. In 1985, the applicant adopted all three children and they bear his surname as well as that of their mother (as is customary in Spain). For a period of approximately 48 years, until February 2020, the applicant and the respondent maintained their relationship. They did so, according to the applicant, in secret. He would visit regularly but their relationship was not that of a married couple. (The applicant does however assert that he has throughout the years provided financial support for the respondent and for the children.) For religious reasons the applicant has never told any member of his family in Gibraltar about the existence of the relationship.

4 The relationship had been deteriorating for some time but matters came to a head in February when the applicant and the respondent were together in her flat in Spain. He says that he was suddenly attacked by her. He had to call for help and their daughter intervened. In his witness statement he describes how he feared for his life. He is disabled and unable to properly defend himself. Had it not been for their daughter's intervention he believes that he would have suffered serious injury. He left the flat the following day and has not returned. It is said by the applicant that, since then, the respondent has made repeated demands for money and has threatened to come to Gibraltar to assault him. She has also threatened to expose him by disclosing the fact of their relationship and intimate details to his family and friends. This, he says, would have a devastating effect because it would lead to him being ostracized by his family and religious community.

5 It is apparent that, if accepted, the applicant's evidence discloses a *prima facie* case of blackmail.

6 The injunctions are sought by the applicant on the grounds of the tort of misuse of private information, harassment and assault.

Misuse of private information

7 I should first deal with the test to be satisfied before an interim injunction based on the tort of misuse of private information can be granted. This requires particular mention because the English authorities which have been referred to me by Daniel Feetham, Q.C., who appeared for the applicant, are concerned with s.12 of the English Human Rights Act 1998. This provides that before any relief is granted which may affect a person's Convention right to freedom of expression (in our case the right afforded by s.10 of the Gibraltar Constitution) the court must be satisfied that: "the applicant is likely to establish that publication should not be allowed." "Likely to establish" has been said to generally mean "more likely than not," although some flexibility as to the standard must be considered in appropriate cases—see *Cream Holdings Ltd.* v. *Banerjee* (5).

8 As was explained in the *Cream Holdings* case, the English Parliament decided on a higher threshold for the granting of these types of interim injunctions (to that set out in the well-known *American Cyanamid* case (1)) so as to safeguard the media's right to freedom of speech. Mr. Feetham rightly pointed out that s.12 of the English Human Rights Act does not extend to Gibraltar. Furthermore, there is no equivalent provision. Whether the courts could and should approach the test in a similar manner so as, arguably, to maintain a better balance between competing constitutional rights, is a discussion for another day. Here I am dealing with a case of alleged blackmail. There can be no competing right to freedom of expression in such a situation. I will therefore follow the guidance set out in *American Cyanamid*.

9 The principles in *American Cyanamid* are set out at para. 15.7 of vol. 2 to the Civil Procedure Rules. Is there a serious question to be tried? If so, would damages be an adequate remedy for a party who suffers loss either as a result of the grant of an injunction or by the court's refusal to do so? If damages are not an adequate remedy, where does the "balance of convenience" lie? Serious question to be tried is taken to mean whether the applicant has a real prospect of success in his claim for a permanent injunction at trial.

10 As to the issues to be resolved, the English authorities clearly explain that the court has to determine the matter in two stages (see for example *Ash* v. *McKennit* (2)). First, does the claimant have a reasonable expectation of privacy in relation to the information? If he does, then the court must go on to consider what is commonly referred to as the "ultimate balancing test." Does the defendant have rights which are to be balanced against the claimant's s.7 right to privacy? It resolves these questions by asking whether, in respect of each of them, it is likely that the claimant will succeed at trial. (Adequacy of damages does not feature.) I will follow this approach but will adapt it and apply the threshold in *American Cyanamid* by asking does the applicant have a real prospect of success at trial on both these questions?

11 The applicant seeks to prevent disclosure of the very existence of the relationship. Without more, this would seem to be quite a strange proposition. The parties have been in a relationship for 48 years and the applicant has adopted all of the respondent's three children—one of whom he considers to be his biological child. There has been significant financial support over the years. The parties must have considered themselves to be a family unit. This is not a short-lived extra-marital affair or sexual encounter. The applicant is not married nor is he in another relationship here in Gibraltar.

12 Underpinning the applicant's expectation of privacy is his family's deeply held religious beliefs. The evidence is that should his family find

out about his relationship with the respondent he will be excommunicated and ostracized.

13 Clearly, the fact that the parties were in a relationship is not a matter which, of itself, is one which is private. It does not fall within categories which are given special protection, such as medical records or intimate details of sexual activity. Mr. Feetham submits that regardless of what the court may think is normal or acceptable, I must look at how the parties themselves viewed their relationship and what expectations as to privacy they had. The submission is that theirs was a relationship which they had agreed would be kept secret.

14 The general test as to whether information is private was formulated by Lord Hope in *Campbell* v. *MGN Ltd.* (4). He said ([2004] UKHL 22, at para. 99):

> "The question is what a reasonable person of ordinary sensibilities would feel if she was placed in the same position as the claimant and faced with the same publicity."

15 Mr. Feetham relied on *Ntuli* v. *Donald* (8). This was a case before the English Court of Appeal where the judgment was handed down by the current President of our Court of Appeal, Sir Maurice Kay. The case had been brought by Howard Donald (who many will know is a member of the band *Take That*) who wished to restrain publication of his relationship some years earlier with musician Adakini Ntuli. At first instance, Eady, J. granted a super-injunction (where the publishing of the fact that an injunction had been sought and obtained was restrained) and restrained Ms. Ntuli from publishing certain matters pending trial. Ms. Ntuli appealed, as did Mr. Donald. The cross-appeal by Mr. Donald complained that the injunction did not go far enough and that publication of the existence of the relationship, which he claimed had been maintained in secret, should have been restrained. As to whether the relationship was secret or not, Eady, J. had stated as follows (quoted from the Court of Appeal's judgment, [2010] EWCA Civ 1276, at para. 36):

> "There seems to be something of a conflict, or at least a difference of interpretation, on how private the relationship actually was. I cannot resolve such a conflict on an application of this kind. It seems to me right, therefore, to conclude that in this respect the Applicant has failed to persuade me that he is 'likely' to establish at trial that the relationship between them had been kept so private that he retained a reasonable expectation of privacy in respect of the mere fact that it existed. To put it another way, it has not been demonstrated that it is necessary and proportionate to extend the injunction so far as to restrict the Defendant's freedom of expression in this respect."

It was submitted on Mr. Donald's behalf that the judge should have approached the matter by applying a lower test than "likely," it being an exceptional case of the type envisaged by Lord Nicholls in the *Cream Holdings* case (5). Maurice Kay, L.J. in dismissing the cross-appeal said as follows ([2010] EWCA Civ 1276, at para. 38):

> "In my judgment, this case bears no resemblance to the cases that Lord Nicholls had in mind as exceptional. Disclosure of the mere fact of this past relationship which, on any view, was not entirely secret, does not carry with it particularly grave adverse consequences. In view of the limited nature of the permitted disclosure and the other matters properly considered by the judge, it cannot be said that, in relation to this issue, he 'erred in principle or reached a conclusion which was plainly wrong', that being the test to be applied on appeal . . ."

16 Mr. Feetham submits that this case provides support for the proposition that the courts will also protect non-sexual private information. That although there the existence of the relationship was not restrained, that was as a result of the judge's assessment of the evidence during the *inter partes* hearing for the interim injunction. I do accept that the *Donald* case (8) shows that a claimant could potentially have a reasonable expectation of privacy in relation to a secret relationship. Clearly, cases would be fact sensitive, but secret relationships could come within the definition of "private information" set out in *Campbell* (4).

17 So what is the evidence in this case? In his witness statement at para. 28 the applicant states:

> "[The respondent] knows that my family is not aware of my relationship with her and she knows that it would cause me huge embarrassment if she came to Gibraltar in order to harass me."

18 There is also evidence from the applicant's solicitor that the respondent agreed to keep the relationship secret. In a witness statement referring to para. 28 of the applicant's witness statement, which I have just quoted, the solicitor says:

> "I have no doubts that this is true as it is clear that secrecy was of paramount importance to the applicant in this relationship with the respondent and I am informed by the applicant and verily believe that the respondent agreed to that secrecy."

19 Self-evidently, the blackmail allegation supports the evidence on secrecy. If it is true that the respondent is threatening to expose the relationship unless the applicant continues providing for her, then this obviously implies that she understands that the applicant wishes to keep the existence of the relationship private.

20 At the hearing I raised with Mr. Feetham that the adoption of the respondent's children must be a matter of public record in Spain. He asserted that it was not and that he had received advice on Spanish law to that effect. Counsel was happy to undertake to file evidence on this if required. Whilst not determinative either way, I am proceeding on the basis that the adoptions are not matters of public record in Spain. I will however require that expert evidence of Spanish law be filed confirming this.

21 Clearly, a proper assessment of the evidence can only take place once the respondent enters an appearance and presents her side of the case. However, at this stage, on the evidence that is before the court, I do find that the applicant has a real prospect of success to establish at trial that he has a reasonable expectation of privacy as to his private relationship with the respondent.

22 The next step is to consider the "ultimate balancing exercise." What rights are to be balanced against the applicant's rights under s.7 of the Gibraltar Constitution to respect for his private life? At this stage, I am dealing with a blackmail case. In such a situation, I struggle to see what rights the respondent may say she has. I therefore agree with Mr. Feetham that the balance comes down firmly in favour of the granting of the injunction. Absent the blackmail allegation, the answer to this question may well be very different.

Harassment and assault

23 Sections 91 and 92 of the Crimes Act 2011 create an offence of harassing conduct. Section 93(1) then provides that:

> "An actual or apprehended breach of section 91(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question."

24 The applicant says that he is being harassed by the respondent. In his witness statement he alleges that he receives almost daily telephone calls from her. In many of these calls she is said to threaten the applicant that she will come to Gibraltar in order to cause him physical harm and to expose details of their relationship to third parties. Mr. Feetham submits that this amounts to harassment.

25 In *Majrowski* v. *Guy's & St. Thomas's NHS Trust* (7), Lord Nicholls defined harassment as being conduct which is oppressive and unacceptable. He stated as follows ([2006] UKHL 34, at para. 30):

> "Where . . . the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to

> recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability . . ."

26 Simon, J., in *Dowson* v. *Chief Constable of Northumbria* (6) summarized the ingredients of the tort of harassment. He stated ([2010] EWHC 2612 (QB), at para. 142):

> "I turn then to a summary of what must be proved as a matter of law in order for the claim in harassment to succeed.
>
> (1) There must be conduct which occurs on at least two occasions,
>
> (2) which is targeted at the claimant,
>
> (3) which is calculated in an objective sense to cause alarm or distress, and
>
> (4) which is objectively judged to be oppressive and unacceptable.
>
> (5) What is oppressive and unacceptable may depend on the social or working context in which the conduct occurs.
>
> (6) A line is to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways: 'torment' of the victim, 'of an order which would sustain criminal liability'."

In the applicant's case, if his evidence is accepted, all the ingredients are present.

27 Insofar as the alleged assault by the respondent in February 2020 is concerned, this took place in Spain. No relief is sought by the applicant in relation to that assault. However, he asserts that he has been threatened with further assaults here in Gibraltar. His evidence is that he fears that such an assault may take place. He is disabled and unable to properly defend himself from any attack.

28 Having regard to the evidence of the applicant as contained in his witness statement (which is supported insofar as the alleged assault in Spain is concerned by a letter from his daughter which is exhibited to the witness statement) it seems to me that he has a real prospect of success in seeking a permanent injunction at trial. Damages are not an adequate remedy. Furthermore, the balance of convenience falls squarely in favour of the granting of the injunction. The respondent will not be prejudiced by being restrained from communicating with or approaching the applicant, his home or workplace. The evidence is that she does not ordinarily come

to Gibraltar. Should she choose to do so whilst this order is in place, the proposed restraint measures will not restrict her movement to any significant degree.

Jurisdiction

29 The court has jurisdiction to deal with the case notwithstanding the fact that the respondent is a Spanish national living in Spain. This is because the threatened disclosure of private information and or the further harassment or assault of the applicant would take place in Gibraltar.

30 Article 7(2) of Regulation (EU) 1215/2012 (known as the Brussels Recast regulation) provides that a person domiciled in a member state may be sued in another member state "in matters relating to tort, delict or quasi delict, in the courts for the place where the harmful event occurred or may occur." In this case there is evidence that torts may be committed here in Gibraltar unless the respondent is restrained. This court therefore has jurisdiction under the regulation.

Anonymization of the parties

31 CPR 39.2(4) allows for the anonymization of parties. It provides as follows:

> "The court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that party or witness."

32 I am making an anonymity order in this case restricting the publishing of the parties' names or any details which may lead to their identification. In my judgment this is necessary to secure the proper administration of justice. I have considered the following: first, this is a case of alleged blackmail. It must follow that the applicant's name be anonymized otherwise he loses the protection that he is seeking from the courts and the protection which the courts should afford him if the allegation is proven. Secondly, on the facts of this case, identifying the parties would have the effect of publishing the very essence of what the applicant seeks to restrain—the existence of a relationship between them. The alternative to the anonymity order, which would be to publish the names but omit any reference to the information that the applicant is objecting to, would be a nonsense in this case. It would be meaningless to hand down a judgment giving reasons for the granting of the injunction without referring to the parties' relationship. Thirdly, there is no real value here in identifying the parties which would militate against the granting of an anonymity order.

33 Disclosure of the respondent's name will not lead to the identification of the applicant. Nevertheless, I am extending anonymity to the respondent as well. It is only fair that I do so. This is an application which has been made without notice and I have therefore only heard one side of the case.

34 In addition, CPR 5.4C(4) allows the court to restrict the persons who may obtain a copy of a statement of case and to make such other order (as to provision of information on the court file) as it thinks fit. In this case, for the same reasons that have led to my making the anonymity order, I shall direct that no non-party should have access to the court file until further order.

Hearing in private

35 At the outset, Mr. Feetham sought an order that the hearing take place in private. I made the order. The court plainly has the power to hear applications in private where it is necessary for the proper administration of justice. Indeed, CPR 39.2(3) lists a number of situations which could lead to a hearing taking place in private. Amongst these are:

> "(a) publicity would defeat the object of the hearing . . .
>
> (c) it involves confidential information . . . and publicity would damage that confidentiality . . .
>
> (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing; . . . [and/or]
>
> (g) the court for any other reason considers this to be necessary to secure the proper administration of justice."

All of these factors are present in this case.

36 To balance the fact that the hearing was held in private, I am handing down this judgment in public. It is an important aspect of our justice system that decisions are made publicly wherever possible. It enables interested observers to follow the court's business and understand the reasons for the decisions it is making. The judgment is anonymized and my recital of the facts has in certain respects been purposely curtailed so as to avoid providing details which could lead to the identification of either party.

Service by alternative means out of the jurisdiction

37 The applicant will serve the claim form and particulars of claim on the respondent in Spain in accordance with Regulation (EC) 1393/2007. This is the principal method of service out of the jurisdiction to another EU member state as envisaged by the Civil Procedure Rules (see CPR

s.6.40). It involves transmission via the Registrar of the Supreme Court (who is the transmitting agency for Gibraltar) to the United Kingdom and then onwards to a receiving agency in Spain. This will take time. It is not uncommon for such service to take upwards of six months. The applicant therefore seeks an order that he be allowed to serve this without notice application, and any order setting out the injunctive relief granted by the court, by personal service in Spain. Alternative service is permitted by CPR 6.15 and 6.27. In effect these provide that the court may authorize service by a method not otherwise permitted by the rules if it appears that there is good reason to do so.

38 Mr. Feetham referred me to *Bayat Telephone Systems Intl. Inc.* v. *Cecil* (3), where Stanley Burton, L.J., in referring to the first instance judge's decision to allow alternative service in that case, said the following ([2011] EWCA Civ 135, at para. 61):

> "The judge's reasons for his decision on this issue are to be found in paragraph 199 of his judgment, which I have set out above. In it, he referred to service as a means of bringing proceedings to the attention of the Defendants. However, service is more than that. It is an exercise of the power of the Court. In a case involving service out of the jurisdiction, it is an exercise of sovereignty within a foreign state. It requires the defendant, if he is to dispute the claim, to file an acknowledgment of service and to participate in litigation in what for him is a foreign state."

He then continued (*ibid.*, at paras. 65 and 68):

> "65. . . . Because service out of the jurisdiction without the consent of the State in which service is to be effected is an interference with the sovereignty of that state, service on a party to the Hague Convention by an alternative method under CPR 6.15 should be regarded as exceptional, to be permitted in special circumstances only.
>
> . . .
>
> 68. Service by alternative means may be justified by facts specific to the defendant, as where there are grounds for believing that he has or will seek to avoid personal service where that is the only method permitted by the foreign law, or by facts relating to the proceedings, as where an injunction has been obtained without notice, or where an urgent application on notice for injunctive relief is required to be made after the issue of proceedings."

39 It is submitted that this case, being one where a without notice injunction has been granted, is one which is exceptional and which requires an order for alternative service pursuant to CPR 6.15. The

applicant wishes to restrain the respondent from publishing private information and from approaching and assaulting him here in Gibraltar. Serving the injunction on the respondent in a timely manner is essential, otherwise the orders may well become irrelevant.

40 In my judgment, this is indeed a case where I should be making an order allowing for alternative service on the respondent. It is an exceptional case in that service needs to take place quickly for the orders to be effective.

Order accordingly.