

**[2022 Gib LR 293]****P v. C**

SUPREME COURT (Ramage Prescott, J.): November 24th, 2022

2022/GSC/030

*Injunctions—interim injunction—harassment—applicant granted ex parte interim injunction restraining respondent from harassing or contacting him—respondent had inter alia made allegations at parties’ child’s school that applicant sexually abused child and posted serious allegations against him on Facebook*

The applicant applied for an interim injunction.

The applicant, a local man, and the respondent, a Spanish woman who lived in Spain, had a young daughter. The applicant claimed that the respondent made allegations outside their daughter’s school that the applicant had sexually abused their daughter; that the respondent had made abusive phone calls and sent defamatory emails to the school; that the respondent posted serious allegations on Facebook; and that the respondent filed a large number of complaints against the applicant in various Spanish courts, most of which had been dismissed as having no evidential basis. There was evidence that the applicant’s health had suffered as a consequence of the respondent’s actions.

The applicant applied for an interim injunction restraining the respondent from harassing or otherwise coming into contact with him. He sought that the hearing take place *ex parte*.

**Held**, granting the application:

(1) The court had power to order that the hearing take place in private pursuant to CPR r.39.2(3). First, publicity would defeat the object of the hearing. If the respondent were to be put on notice of the hearing, the applicant’s safety and well-being might be an issue as well as the safety and well-being of the parties’ child. Secondly, a private hearing was necessary to secure the proper administration of justice. This was an urgent matter and justice was best served by treating it *ex parte* and expeditiously (para. 2).

(2) Harassment had been defined essentially as being conduct which was oppressive and unacceptable (*Majrowski v. Guys & St. Thomas’s NHS Trust*, [2006] UKHL 34). In *Dowson v. Chief Const. (Northumbria)* ([2010] EWHC 2612 (QB)) the court set out what must be proved as a matter of law for a claim of harassment to succeed: there must be conduct which

occurred on at least two occasions; which was targeted at the claimant; which was calculated in an objective sense to cause alarm or distress; and which was objectively judged to be oppressive and unacceptable; what was oppressive and unacceptable might depend on the social or working context in which the conduct occurred; a line was to be drawn between conduct which was unattractive and unreasonable, and conduct which had been described in various ways as tormenting a victim or of an order that would sustain criminal liability. The court was satisfied that if the applicant's evidence was to be believed, he had without doubt been the subject of a continued and persistent campaign of harassment both in Gibraltar and in Spain, although for the purposes of this application the court restricted itself to consideration of harassment in Gibraltar. On the evidence before the court, there was a real prospect of success in obtaining a permanent injunction at trial, damages were not an adequate remedy and the balance of convenience lay in favour of granting an injunction. The court had jurisdiction because the harassment, or some substantial part of it, had taken place and continued to take place in Gibraltar. The court was referred to art. 7(2) of Regulation (EU) 1215/2012 (the Brussels Recast regulation) for the basis of the court's jurisdiction. That regulation provided that a person domiciled in a member state might be sued in another member state in matters relating to tort delict or quasi-delict in the courts of the place where the harmful event occurred or might occur (paras. 9–12).

(3) CPR r.39.2(4) allowed for the anonymization of the parties. This case involved some serious allegations made by the applicant against the respondent and, in the event that they were not proved, she was entitled to have her reputation protected by anonymity and, in the event that they were proved, the applicant was entitled to the same protection (para. 13).

(4) The court granted permission for service by alternative means, namely personal service on the respondent in Spain. Service via the transmitting agency for Gibraltar to the United Kingdom and onward to the relevant agency in Spain, which could take six months or more, would frustrate the purpose of the injunction and would not be in the interests of justice (para. 14).

**Cases cited:**

- (1) *Dowson v. Chief Const. (Northumbria)*, [2010] EWHC 2612 (QB), followed.
- (2) *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, followed.

*N. Gomez* (instructed by Charles Gomez & Co.) for the applicant.

**Ex tempore ruling**

1 **RAMAGGE PRESCOTT, J.:** This is the applicant's application for an interim injunction restraining the respondent from harassing or otherwise

coming into contact with the applicant. The applicant seeks that this hearing take place *ex parte*.

2 I am satisfied that pursuant to Civil Procedure Rules r.39.2(3) the court has the power to order that the hearing take place in private if (*inter alia*):

(i) Publicity would defeat the object of the hearing. I am satisfied that if the respondent were to be put on notice of this hearing, the applicant's safety and well-being might be an issue as well as the safety and well-being of the child of the parties.

(ii) A private hearing is necessary to secure the proper administration of justice. This is an urgent matter and at the moment justice is best served by treating it *ex parte* and expeditiously.

3 By way of summary, the reason relied upon for the issue of the injunction is in broad terms harassment. The applicant is a local man. The respondent is a Spanish woman who I understand lives in Spain. The applicant lives in Gibraltar. They have a 5-year-old daughter in common. The applicant identifies the grounds for the application in two affidavits, one dated October 17th, 2022, with exhibits, and a second affidavit dated November 22nd, 2022, also with exhibits.

4 By way of summary those grounds are that shortly after the daughter started school in September 2021, Mother turned up at the school gates brandishing blood-stained underwear and alleging in a loud voice that Father had abused the daughter sexually. On another occasion, two suspicious men turned up at the school gates in a Spanish registered car. The respondent has made abusive phone calls and has sent defamatory emails to the school. As a result of this the school has implemented a system where the child was segregated from the rest of the school at leaving time. This continues to be in place to date, the implication being that the concerns with the regards to the safety and well-being of the child continue to be a live issue. In addition, the school has contacted Child Protection Services with relation to Mother's conduct. Mother continues to turn up at the daughter's school and shout abuse at Father.

5 As an aside I note that the court in Spain has stopped all contact between Mother and child as a result of Mother's behaviour.

6 The second ground is the fact that the respondent has been posting serious allegations on Facebook from about September 2021 to very recently. She has set up a Facebook page and she posts on that various allegations about the applicant's alleged behaviour. There is also concern that she has set up a further fake page on Facebook pretending to be friend (of the respondent) and has made comments such as that the applicant "is a convicted person who has abused his daughter and that the justice system is not working."

7 In addition, although not in Gibraltar, the respondent is alleged to have filed 68 complaints in various Spanish courts against the applicant, very often the same complaint in two or more distinct courts in Spain and most of these complaints have been dismissed as having no evidential basis.

8 I note that the applicant's health has suffered as a consequence of the respondent's actions and there is supporting medical evidence to that effect before me.

9 With regard to the law, the applicant relies on s.91 and s.92 of the Crimes Act 2011, which create the offence of harassing conduct, as well as s.93, which provides that an actual or apprehended breach of s.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. Harassment is defined at s.89 of the Crimes Act 2011. I take note of the case of *Majrowski v. Guys & St. Thomas's NHS Trust* (2) where Lord Nicholls defined harassment essentially as being conduct which is oppressive and unacceptable. He stated ([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 . . .”

10 In addition I refer to the ingredients of the tort of harassment which were summarized in the case of *Dowson v. Chief Const. (Northumbria)* (1) ([2010] EWHC 2612 (QB), at para. 142) where Simon, J. set out what must be proved as a matter of law in order for the claim of harassment to succeed, is that:

- “(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.’”

11 Applying those definitions of harassment, in particular that latter definition, I am satisfied that if the applicant's evidence is to be believed he has, without a doubt, been the subject of a continued and persistent campaign of harassment both in Gibraltar and in Spain, but for the purposes of this application I restrict myself to consideration of harassment in Gibraltar.

12 I am of the view that on the evidence before me, there is a real prospect of success in obtaining a permanent injunction at trial, that damages are not an adequate remedy in this case and that the balance of convenience lies in favour of granting an injunction. I am satisfied that the court has jurisdiction because the harassment, or some substantial part of it, has taken place and continues to take place in Gibraltar. I am referred to art. 7(2) of Regulation (EU) 1215/2012 (known as the Brussels Recast regulation) for the basis of the court's jurisdiction. That 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 of the place where the harmful event occurred or may occur.

13 It is requested that this ex tempore ruling be anonymized in order to protect the reputation of the parties. I am satisfied that Civil Procedure Rule r.39.2(4) allows for the anonymization of the parties in order to secure the proper administration of justice and in order to protect the interests of the party or the witness. I agree with Mr. Gomez that this case involves some serious allegations made by the applicant against the respondent and in the event that they are not proved she is entitled to have her reputation protected by anonymity and similarly, in the event that they are proved, the applicant is entitled to the same protection.

14 The applicant requests service by alternative means. This injunction would have to be served out of the jurisdiction and I am satisfied that the process of service via the transmitting agency for Gibraltar to the United Kingdom and onward to the relevant agency in Spain, and taking account of the obligation can certainly and very commonly does take 6 months or more. That, in my view, will frustrate the purpose of the injunction and would simply not be in the interests of justice. I remind myself that alternative service is permitted by Civil Procedure Rule r.6.15 and r.6.27 so that the court can order an alternative means of service if there is a good reason to do so and I am satisfied that in this case there is good reason to do so. The mode of service that is proposed is personal service on the respondent in Spain and I give permission for that alternative mode of service.

15 Application granted. Order to follow.

*Application granted.*